

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8178 OF 2017
WITH CA/14520/2017 IN WP/8178/2017

VYANKAT TULSHIRAM GURME AND OTHERS
VERSUS
MANOHAR NAMDEO GURME AND OTHERS

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Advocate for Petitioners : Mr. V.D. Gunale
Advocate for Respondent Nos. 1 and 2: Mr. S.B. Madde
Advocate for Respondent No.4 : Mr. S.B. Ghatol Patil

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CORAM : V. K. JADHAV, J.
DATED : 6th DECEMBER, 2017

PER COURT:-

1. Being aggrieved by the order dated 21.1.2017, passed by 6th Jt. Civil Judge, Junior Division, Udgir, below Exh.22 in Regular Civil Suit No. 333 of 2015, the original defendant Nos. 2 to 4 approached this Court by filing present writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) Respondent Nos. 1 and 2-original plaintiffs have instituted the suit in respect of suit property simplicitor for perpetual injunction and also filed an application Exh.22 for appointment of Court Commissioner. The trial court by impugned order dated 21.1.2017 below Exh.22 allowed the said application with certain directions to

the District Superintendent of Land Records (D.S.L.R.) to visit the suit land, measure the same and prepare a report alongwith the map and submit the same on record etc. Hence, this writ petition.

3. Learned counsel for the petitioners-original defendant Nos. 2 to 4 submits that respondent Nos. 1 and 2-original plaintiffs have instituted the suit simplicitor for perpetual injunction and there is no pleading about encroachment over the portion of suit land on the part of the petitioners-defendants. Learned counsel submits that in para 6 of plaint, it has been pleaded that the defendants have obstructed the peaceful possession of the plaintiffs on account of quarrel on account of common Bandh. Learned counsel submits that towards southern and northern side of the suit land, the agricultural land of petitioners-defendants is shown however, the respondents-plaintiffs have incorrectly shown the boundaries. In fact, towards southern side of the suit land, there is Nalla having width of 5 ft and further there are Tamarind, Babhul and Neem trees standing between the suit land and the land of the defendants apart from the Nala, as aforesaid. Learned counsel submits that towards northern side, there is river in between the land of the plaintiffs and defendants and bed of the said river is approximately 50 ft. in width. Learned counsel submits that in any case, there is no common bandh in the suit land and the lands of the petitioners-defendants. Apart from this, the trial

court has appointed the D.S.L.R. as Court Commissioner to measure the suit land alongwith the land owned and possessed by the petitioners-defendants. Though the respondents-plaintiffs have prayed in their application Exh.22 about measurement of suit land alone and there is no boundary dispute, the trial court has directed the Court Commissioner to fix the boundaries of the aforesaid land and submit a report alongwith the map. Learned counsel submits that entire exercise undertaken by the trial court on the application submitted by the respondents plaintiffs is unwarranted and uncalled for.

4. Learned counsel for the respondents-original plaintiffs submits that though the respondents have filed suit simplicitor for perpetual injunction, there is dispute about common bandh, and as such the boundaries are required to be fixed by carrying out the measurement through D.S.L.R. Office. Learned counsel submits that the suit land is ancestral land of the respondents-plaintiffs and the petitioners are causing obstruction to the peaceful possession of the plaintiffs by disputing the boundaries. Learned counsel submits that the trial court has rightly allowed application Exh.22. Even though the respondents-plaintiffs have prayed to measure the suit land alone, the trial court directed to measure the suit land as well as the land owned and possessed by the petitioners-defendants in order to

resolve the dispute between the parties. No interference is required. Writ petition is liable to be dismissed.

5. In the suit seeking decree of perpetual injunction simplicitor, the plaintiffs have filed application for appointment of Court Commissioner to measure the land for fixation of boundaries. The respondents-plaintiffs have not pleaded that the petitioners-defendants have encroached upon the portion of suit land. It has been simply pleaded in the suit that on account of dispute in respect of common bandh the cause of action arose and accordingly the plaintiffs constrained to approach the Civil Court for decree of perpetual injunction. There may be dispute about common bandh in the different manner, however, in absence of any specific pleadings about boundaries and the encroachment, it would not be appropriate on the part of trial court to appoint the Court Commissioner to measure the suit land as well as the land owned and possessed by the petitioners-defendants and fix the boundaries. The same is also not appropriate when the petitioners have specifically pleaded about incorrect boundaries mentioned in the suit in respect of suit land. This is nothing but an attempt to collect evidence through the Court Commissioner. The trial court has placed reliance on the judgments in certain cases, however, in those cases there is dispute either on boundary or in respect of suit way or encroachment. In view of

above discussion, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 21.1.2017 passed below Exh.22 in Regular Civil Suit No. 333 of 2015 is hereby quashed and set aside. The application Exh.22 is hereby rejected.
- III. Writ petition is hereby disposed of.
- IV. Pending civil application 14520 of 2017 is also disposed of.

(V. K. JADHAV, J.)

rlj/