

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

1. Writ Petition NO. 1829 OF 2017

Vijay Vitthalsing Pardeshi
And Anr.

...Petitioners

Versus

Dilip Ganu Nivate

...Respondent

WITH

2. Writ Petition NO. 1830 OF 2017

WITH

3. Writ Petition NO. 1831 OF 2017

WITH

4. Writ Petition NO. 1832 OF 2017

WITH

5. Writ Petition NO. 1833 OF 2017

WITH

6. Writ Petition NO. 1834 OF 2017

WITH

7. Writ Petition NO. 1835 OF 2017

WITH

8. Writ Petition NO. 1836 OF 2017

WITH

9. Writ Petition NO. 1837 OF 2017

WITH

10. Writ Petition NO. 1838 OF 2017

WITH

11. Writ Petition NO. 1839 OF 2017

WITH
12. Writ Petition NO. 1840 OF 2017

WITH
13. Writ Petition NO. 1841 OF 2017

WITH
14. Writ Petition NO. 1842 OF 2017

WITH
15. Writ Petition NO. 1844 OF 2017

WITH
16. Writ Petition NO. 1845 OF 2017

WITH
17. Writ Petition NO. 1846 OF 2017

WITH
18. Writ Petition NO. 1847 OF 2017

WITH
19. Writ Petition NO. 1848 OF 2017

WITH
20. Writ Petition NO. 1849 OF 2017

WITH
21. Writ Petition NO. 1850 OF 2017

WITH
22. Writ Petition NO. 1851 OF 2017

....
Mr.Sachin Pawar, Advocate for the Petitioners.

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CORAM : R. G. KETKAR, J.

DATE : 15th FEBRUARY, 2017

P.C.

1. Heard Mr.Sachin Pawar, learned Counsel for the petitioners, at length.

2. By these petitions under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and orders dated 25.11.2016 passed by the learned 2nd Jt. Civil Judge, Junior Division, Khed below Exhibit-21 in various suits instituted by the plaintiffs. By the impugned orders, the learned trial Judge rejected the applications made by the plaintiffs for appointing Court Commissioner to measure the suit property.

3. The plaintiffs have instituted suits for demolition of the unauthorized constructions carried out by the defendants in the suit property. The defendants have resisted the suits by filing written statements and have claimed to have become owners by adverse possession. The plaintiffs filed applications at Exhibit-21 under Order XXVI Rule 9 of C.P.C. for appointment of the Deputy Superintendent of Land Records as a Court Commissioner for carrying out measurement of the property bearing Gat No.1273(new) 3520 (old) so as to bring on record the

encroachment made by the defendants. By the impugned orders, the learned trial Judge dismissed the applications. It is against these orders, the plaintiffs have instituted present Petitions.

4. While rejecting the applications, the learned trial Judge has observed that the plaintiffs got their lands measured on 25.6.2011. On the basis of that report, the plaintiffs contend that there is encroachment over the suit properties by the defendants. The learned trial Judge also observed that the defendants are in possession of the suit properties and are claiming title by adverse possession. As the defendants are in possession of the suit properties, issue of encroachment does not arise.

5. Mr. Pawar submitted that on the basis of the grievance made by S/Shri Ramdas Vitthal Kadam, Shankar Dagadu Sonawane and Sahadu Hiranman Kadam, the Deputy Superintendent of Land Records, Khed has cancelled the measurement map in Measurement Register No.7764/2011. He submitted that Shri Ramdas Vitthal Kadam has filed complaint on 1.8.2014 before the learned Judicial Magistrate, First Class,

Rajgurunagar under Sections 166, 167, 193, 199, 200, 420, 467, 471 read with Section 34 Indian Penal Code, 1860. Apart from that FIR No.342/2015 is registered with Khed Police Station for the offence punishable under Sections 166, 167, 193, 200, 420, 467, 468, 471 read with Section 34 Indian Penal Code, 1860 on the basis of complaint made by Ramdas Vitthal Kadam. He submitted that even if the plaintiffs have got the land measured on 25.6.2011, they will not be in a position to examine said witness as the measurement map itself is cancelled. He, therefore, submitted that it is an imminent case for appointment of the Court Commissioner. He submitted that in fact these developments were not pleaded in the applications at Exhibit-21 made by the plaintiffs. He, therefore, seeks permission to withdraw the applications Exhibit-21 with liberty to file applications bringing these facts on record before the trial Court. He, therefore, seeks permission to withdraw the petitions. He also states that the plaintiffs will consider challenging the communication dated 22.7.2014 cancelling the measurement map as also for quashing the criminal complaints filed against the plaintiffs.

6. In view thereof, on the motion made by Mr. Pawar,

applications Exhibit-21 as also these petitions are allowed to be withdrawn with liberty to file fresh applications for appointment of Court Commissioner giving requisite details as regards cancellation of map as also filing of criminal cases against the plaintiffs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)