

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4807 OF 2017

Sikandarsingh Ishwarsingh Dudhani & Anr. ... Petitioners
Vs.
Parvindarsingh Harbansingh Popali & Anr. ... Respondents

Mr. Jayesh Kocheta a/w. Alifiya Palitonwala, Advocate for the petitioners.
Mr. Niranjan Mogre a/w. Mankirat Singh, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **7th July, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, this Writ Petition is finally heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 1st March, 2017 passed by learned Joint Civil Judge Junior Division, Pune allowing the Application below Exhibit 37 made by the respondents/defendants for giving permission to take the measurements of plot no. 16 to the City Survey office. The said Application is allowed. Hence, the petitioners/plaintiffs have filed this Writ Petition.

3. The learned counsel for the petitioners has submitted that the

petitioners have filed the suit for injunction against the respondents/defendants in respect of suit property, which is plot no. 11. He submitted that the defendants claims as owner of the plot no. 16. The plaintiffs' application for interim injunction Exhibit 5 is allowed in respect of plot no. 11. The objection taken by the learned counsel is that the plaintiffs have filed the suit in respect of plot no. 11 and in that suit, the application made by the defendants for measurement in respect of plot no. 16 which is not a suit property cannot be passed. He further submitted that earlier the application for appointment of Court Commissioner for measurement of plot nos. 11 and 16 was made by the defendants and it was rejected. On this background, this order is erroneous.

4. The learned counsel for the respondent/defendant has submitted that in fact the plaintiffs have given consent for the measurement taken by the City Survey Office in respect of his property, i.e., plot no. 16. The learned Judge has recorded the said consent in paragraph 2 of the order and if at all such consent was given by the plaintiffs in respect of measurement of plot no. 16 owned by the defendants, then this Petition is in fact not maintainable. He further submitted that in fact the Survey officer is willing to take the measurements, as the

defendants have paid necessary charges. However, the plaintiffs have taken objection to that effect before the Survey Officer and therefore, the Survey Officer is not ready to take measurement of plot no. 16 due to the pendency of Regular Civil Suit No. 1719 of 2015.

5. The controversy is short and it can be sorted out with the following order:

- (i) Firstly, the learned Judge should not have passed any order in respect of property which is not a suit property in Regular Civil Suit No. 1719 of 2015 and the suit is filed by the plaintiffs/petitioners. Hence, the impugned order is erroneous and it is set aside;
- (ii) It is made clear that plot no. 16 is not a suit property in Regular Civil Suit No. 1719 of 2015, therefore, it is a separate issue of measurement of said plot, as the suit property is plot no. 11 which is claimed by the plaintiffs;
- (iii) Measurement in respect of plot no. 16 can be carried out, as it is not a suit property.

6. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)