

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5115 OF 2017

Machhindra Jijaba Langhe & Anr. ... Petitioners
Vs.
Kailas Bahirao Langhe & Anr. ... Respondents

Mr. S.R. Nargolkar a/w. Mr. Mr. Ketan Joshi i/b. Ergo Juris, Advocate
for the petitioners.

Mr. Jaydeep Deo, Advocate for respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 4th August, 2017.

P.C.:

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

2. This Writ Petition is directed against the order dated 31st May, 2017 below Exhibit 7 in Regular Civil Suit No. 32 of 2016 passed by the learned Joint Civil Judge Junior Division, Shirur, Pune. The suit is filed by the respondents for injunction, possession of the encroached area and mense profit. During the pendency of the suit, Application Exhibit 7 was made by the plaintiffs/respondents for the measurement of Gat No. 432 to show alleged encroachment made by the petitioners/defendants. The petitioners opposed the said

application by filing their reply mainly on the ground that there is no encroachment and secondly, earlier on 28th January, 2010 measurement of Gat No. 432 was carried out. The learned Judge after hearing both the parties allowed the application of the respondents/plaintiffs. Hence this Writ Petition.

3. The learned counsel for the petitioners/defendants has submitted that the petitioners have purchased the land, so they are the owners and in possession of Gat No. 427/2 which is adjacent to the land of the respondents/plaintiffs, i.e., Gat No. 432. The learned counsel has further submitted that the petitioners have not encroached upon any portion of the land of the respondents. The learned counsel for the petitioners submitted that his predecessor in title of his land has purchased the land from the father of the respondents/plaintiffs. He submitted that as earlier the measurements were carried out by respondents but that was not favourable to them and therefore, now they have moved the Application for measurement again, which should not have been allowed by the trial Court. Alternatively, the learned counsel has submitted that if the measurements have to be carried out, then it is to be carried out of both Gat No. 432 and Gat No. 427/2 of Village

Savindhane, Taluka Shirur, District Pune.

4. Per contra, the learned counsel for the respondents/plaintiffs has submitted that the respondents/plaintiffs have filed the suit that the petitioners/defendants should not obstruct the process of measurements and encroached portion is to be handed over to them. He has supported the order passed by the learned Judge of the trial Court.

5. From the submissions of the learned counsel of both the sides, it can be easily gathered that it is boundary dispute between the parties and when the lands of both the parties are adjacent, it can be sorted out only after measurements are brought on record before the Court. The respondents/plaintiffs have given the application for measurement of their Gat no. 432 only, however, measuring only one Gat No. where the issue of measurement will not suffice the purpose but the lands of both the parties are required to be measured. In view of this, the order passed by the learned trial Judge is hereby modified as follows:

- (i) Both the lands, i.e., Gat No. 432 and Gat No. 427/2 of Village Savindhane, Taluka Shirur, District Pune are to be measured by TILR, Shirur within two months after this order

is produced before TILR.

(ii) Rest of the order is maintained.

6. Writ Petition is partly allowed.

(MRIDULA BHATKAR, J.)