

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7916 OF 2017

Shri.Praveensinh Vasantrao Garad & Ors. ...Petitioners

Versus

Shri. Balasaheb Jivan Patange & Ors. ...Respondents

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Mr.Milind R. Deshpande for the Petitioners.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 19, 2017**

P.C. :

1. This petition is directed against the order dated 05.04.2017 passed by the learned 2nd Jt. Civil Judge, Junior Division, Mohol below Exhibit 24 in Regular Civil Suit No. 124 of 2014 thereby allowing the application filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure for appointment of the Court Commissioner.

2. The petitioners are the original defendants in the Suit. Earlier the application below Exhibit 5 filed by respondent no.1/original plaintiff seeking interim relief was rejected by the learned 2nd Jt. Civil Judge, Junior Division, Mohol, vide order dated 25.09.2014. Thereafter, Misc.

Civil Appeal was preferred against the said order was also rejected. Thereafter, respondent no.1/original plaintiff filed another application below Exhibit 24 for appointment of the Court Commissioner. The said application was allowed by the learned Judge, vide order dated 05.04.2017. Hence, this Writ Petition.

3. The learned counsel for the petitioners has submitted that he has served the contesting respondent. He has further submitted that earlier the father of the petitioners/defendants had filed a Suit No. 112 of 1980 and in that Suit in Appeal from Order No. 920 of 2003, the High Court passed the order stating that the defendants i.e. present petitioners *“will have no objection to demarcate four gunthas of land belonging to the plaintiffs on the basis of sale deed of 1948 for the purpose of demarcation and fixing the boundaries of the land belonging to plaintiffs, it will be necessary to appoint commissioner and therefore, I do not see any reason to interfere in the order passed by the first appellate court”*. He has further submitted that in the order dated 25.09.2014 passed below Exhibit 5, the issue of making measurement was also dealt with by the trial Court. In the said order, the trial Court has observed that the plaintiff is not allowed to execute those orders of measurement passed in Regular Civil Suit No. 112 of 1980 in Appeal from Order No. 920 of 2003. He has further submitted that earlier the

measurement work was carried out in the suit premises and therefore, the order of appointment of the Court Commissioner is to be set aside.

4. Perused the impugned orders. The orders passed by the trial Court below Exhibit 5 and Exhibit 24 are under challenge. It appears that the parties are litigating since long, as there is a boundary dispute of the adjacent plots. The Suit was filed for simpliciter measurement and for injunction against the defendants that they should not proceed with the construction. While rejecting the application below Exhibit 5, the trial Court has considered the observation made by the High Court in Appeal from Order No. 920 of 2003. By the said observation, if the parties want to go for the measurement, then the defendants in the Suit i.e. the present petitioners said that they will not take objection. However, the application below Exhibit 24 is an independent application made under Order 26 Rule 9 of C.P.C. for appointment of the Court Commissioner. The learned Judge while allowing the said application heard both the sides and considered the documents produced by the parties and also considered the earlier order in Misc. Civil Appeal No. 445 of 1997, wherein the fact of measurement and fixing of boundaries was observed. The learned Judge has also considered the observations made by the High Court in Appeal from Order No, 920 of 2003. There is a boundary dispute between the parties and the order of

carrying out the measurement is found correct and legal. Hence, no interference is required in the order dated 05.04.2017 passed by the learned 2nd Jt. Civil Judge, Junior Division, Mohol. Hence, Writ Petition is dismissed summarily.

(MRIDULA BHATKAR, J.)