

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 23 OF 2017

Anusayabai Namdeo Mitke
(since Decd) Lrs. And Anr.

...Petitioners

Versus

Shri. Raghunath Dada Mitke

...Respondent

With

Writ Petition NO. 254 OF 2017

With

Writ Petition NO. 255 OF 2017

....

Mr.Girish R. Agrawal, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 16th JANUARY, 2017

P.C.

1. Heard Mr.Girish R. Agrawal, learned Counsel for the petitioners, at length.
2. By these Petitions under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 6.2.2016 passed by the learned Jt. Civil Judge, Junior Division below Exhibits-27, 31 and 77 in RCS Nos.111/1996, 112/1996 and 110/1996 respectively. By these orders, the learned

trial Judge rejected the applications filed by the plaintiffs for remeasuring the suit land by appointing District Inspector of Land Records as Court Commissioner.

3. In support of these Petitions, Mr.Agrawal submitted that the suits were dismissed by the trial Court on 12.1.2005. Aggrieved by these decisions, the plaintiffs preferred Regular Civil Appeals in the District Court. He has taken me through paragraph-6 of the District Court's orders. The learned District Judge partly allowed the appeals and remitted the matters to the trial Court for fresh decision and to proceed with the suits from the stage of framing of issues and to give both the parties opportunity to lead evidence on their behalf on the point of measurement and also permit them to do necessary procedure, if they desire, for proving their respective cases. He submitted that in paragraph-6, the learned District Judge observed that the Counsel for the respondent did not dispute necessity to lead evidence on the point of measurement done at the Appellate stage provided that he may be given an opportunity to cross-examine the witness going to be examined for proving the measurement. The learned District Judge further observed that as it is found that in the measurement done before the learned trial Court and in the measurement done before the

District Court, there is substantial difference in the dimensions of the area alleged to have been encroached by the defendant, for proper finding on the exact area of the encroachment, if any, committed by the defendant, it is necessary to remand case to the learned trial Court to lead evidence on the point of measurement and also to give an opportunity to both the parties to lead their relevant evidence. Regarding alleged encroachment, if any, the area in possession of the respective parties and also to ***do necessary procedure regarding the measurement, if the party desires.*** He submitted that liberty may be reserved to the plaintiffs to move the District Court seeking clarification of the order passed by it so as to appoint District Inspector of Land Records for carrying out fresh measurement.

4. On the motion made by Mr. Agrawal, Petitions are allowed to be withdrawn with liberty as prayed for. It is made clear that I have not expressed any opinion on the proposed proceedings to be initiated by the plaintiffs. All contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)