

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 8264 OF 2015

BABA BHIKA MASAL AND OTHERS
VERSUS
DATTATRAYA RAMCHANDRA GALANDE AND ANOTHER

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Advocate for Petitioners : Mr. R. R. Karpe
Advocate for Respondents : Mr. B. A. Shinde h/f
Mr. V. P. Latange

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CORAM : V. K. JADHAV, J.
DATED : 7th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioners / original plaintiffs have instituted a suit for decree of perpetual injunction and during the pendency of the said suit, after appearance of the respondents / defendants filed a joint application Exh.20 signed by the plaintiffs as well as defendants for appointment of Court Commissioner to measure the suit land as well as the land owned and possessed by the respondents / defendants. The learned Judge of the trial court has allowed the said application and directed the Assistant Superintendent of Land Records to measure the land and submit

report. Accordingly, the surveyor of the Land Record Office has carried out the measurement and submitted the report along with map. Thereafter, the petitioners have filed an application Exh.32 pointing out therein that though the surveyor has measured the land as directed, however, he has not shown the boundary marks in his map and as such, there is no compliance of the order passed below Exh.20. The respondents / defendants have resisted the said application by filing say overleaf stating therein that the Land Record Office has correctly carried out the measurement and respondents / defendants have also admitted the said measurement along with the map. The application Exh.32, thus may be rejected. The learned Judge of the trial court by impugned order dated 23.01.2014 rejected the application Exh.32 with the observations that no specific prayer is made in respect of fixation of boundaries in the application Exh.20 and as such, no any specific order in that regard came to be passed. Hence, this writ petition.

3. Learned counsel for the petitioners / original plaintiffs submits that the application Exh.20 which has been jointly filed by the petitioners and respondents before the trial court, it has

been specifically stated in the body of the application that the surveyor of the Land Record Office may be directed to fix the boundaries. The trial court has allowed the said application without giving any specific directions. Since, application Exh.20 was filed jointly, it was incumbent upon the surveyor of the Land Record Office to comply with the averments made in the application in absence of any specific directions by the court. The trial court has also erroneously observed that there is no prayer in respect of fixation of boundaries.

4. Learned counsel for the respondents / defendants submits that the petitioners / plaintiffs are simply killing the time. The surveyor has already submitted the report before the trial court and the same is also admitted by the respondents / defendants. The parties have till this date not examined the said surveyor. There is sufficient compliance of the directions given by the court in the order passed in application below Exh.20. Application Exh-32 is unwarranted and uncalled for and the trial court has rightly rejected the same. No interference is required.

5. On perusal of the contents of application Exh-20, it appears

that the petitioners / original plaintiffs and the respondents / original defendants have jointly stated in the application that the surveyor may also be directed to fix the boundaries in respect of both the lands after measurement and accordingly made prayer about the measurement. The learned Judge of the trial court has allowed the said application without giving any specific directions and as such it has to be assumed that in terms of the averments made in the joint application Exh.20 submitted by the parties, the trial court has directed the measurement. Admittedly, the surveyor, who has carried out the measurement and submitted the report before the trial court, has not fixed the boundaries of both the lands. Thus, the very purpose of filing of joint application for measurement of the suit land as well as land owned and possessed by the respondents / defendants would be defeated. Since, respondents / defendants have submitted the application jointly with the petitioners / plaintiffs, there is no reason to resist the application Exh.32 when admittedly surveyor has not fixed the boundaries. The learned Judge of the trial court has also observed contrary to the averments made in application Exh.20. Thus, the impugned order is liable to be quashed and set aside. Hence, I proceed to

pass the following order.

ORDER

- I) Writ petition is allowed. No costs.
- II) The impugned order dated 23.01.2014 below Exh.32 in R.C.S. No. 3 of 2013 passed by Civil Judge (Junior Division, Karjat is hereby quashed and set aside.
- III) Application Exh.32 is allowed in terms of its prayer clause.
- IV) In case, certain fees is also required to be paid for fixation of the boundaries, both the parties shall bear the expenses equally.
- V) The trial court shall issue appropriate directions to the Land Record Office in terms of the averments made in the application Exh.32.
- VI) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/