

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

WRIT PETITION NO. 4979 OF 2018

Prakash s/o Pandurang Palodkar .. Petitioner

versus

Subhadrabai w/o Balaji Kadam and others .. Respondents

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Mr Mahesh V. Ghatge, Advocate for petitioner

Mr S. S. Tope, Advocate for respondents no. 1 and 2

CORAM : SUNIL P. DESHMUKH, J.

DATE : 1<sup>st</sup> August, 2018

ORDER :

1. Heard learned counsel for petitioner-original plaintiff.
2. There does not appear to be any serious dispute about that the petitioner is a purchaser of lands from survey number 141/1, 141/2 and 141/3. Although it is the contention on behalf of the petitioner that there may not be existence of land under survey number 141/4 yet, one may not lose sight of fact that litigation in respect of land bearing survey no. 141/4 has been going on between the parties and injunction in respect of very same land has been operating against present petitioner.

3. Perusal of appellate court's judgment rendered on 23-04-2018 in miscellaneous civil appeal no. 50 of 2012 shows that the matter has been considered rather cursorily. It appears that observations by the two courts hitherto in respect of boundaries referred to in the sale deed would not be meeting with. It further appears that the theory adopted by present respondents – original defendants about there being shifting of Hatta - Purna road has been readily accepted without there being any reliable material on record worth consideration. There is a document issued by Talathi and there are some submissions by the parties here and there.

4. Having regard to the facts and circumstances particularly undisputed fact that there has been sale in favour of petitioner of lands bearing survey number 141/ 1 to 3 and respondents claim to be owner of survey number 141/4, theory of dispute over eastern and western boundaries will have to be dealt with little more cautiously. The judgment of appellate court does not reflect consideration of said aspect. It also does not show that theory adopted by respondents about shifting of road can

be readily relied on and there does not appear to be any cogent/authentic material as on the date. Efficacy of document issued by *talathi*, would have to be gauged. The appellate court has observed, since petitioner has claimed that respondents have illegally harvested crop over his land, the same would tantamount to dispossession. This aspect will also have to be reconsidered by the court.

5. While this is the position, learned counsel on either side, on instructions, consider it appropriate that respective lands of plaintiff and defendants be measured and the matter be proceeded with accordingly and that the parties would bear costs of measurement by taluka inspector of land record.

6. As such, taluka inspector of record to measure lands under survey number 141/1,2,3 and 144/4. Joint measurement be carried out. Measurement report be submitted to appellate court. The appellate court to consider the matter thereafter. Parties to bear costs of measurement.

7. Order passed in miscellaneous civil appeal no. 50 of

2012 on 23-04-2018 stands set aside. It has been referred to specifically that injunction granted by trial court had been stayed under the orders of the appellate court. In the circumstances, ad-interim order which is passed by this court to continue to operate till disposal of miscellaneous civil appeal. It is hoped, whole exercise would be completed by appellate court within a period of three months from the date of receipt of writ of this order.

8. With aforesaid, writ petition is disposed of.

SUNIL P. DESHMUKH,  
JUDGE

pnd/-