

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

WRIT PETITION NO. 7400 OF 2018

Preetamkumar Shriram Rathod

... Petitioner

Versus

Shaikh Rashid Shaikh Yusuf & others

... Respondents

Mr.V.D. Gunale, Advocate for the Petitioner.

Ms. A.M. Ansari, Advocate for Respondent no. 1.

Coram : N.M. Jamdar, J.

Date : 26 November 2018.

Per Court :

1. After hearing learned counsel for the parties, it appears that there is necessity for demarcation of the land that respective parties i.e. petitioner and respondent no. 1 stated to have purchased from respondent no. 2. In view of this position, learned counsel for the parties agree that presence of respondents 2 and 3 is not necessary for the order that is proposed to be passed.

2. Respondent no. 1 has instituted a suit in the Court of Civil Judge, Junior Division, Jalna. Petitioner has filed written

statement and contested the suit. The learned Civil Judge has granted order of injunction in favour of respondent no. 1 which is confirmed by the learned District Judge. Perusal of both the orders shows that there is an ambiguity in respect of identification of the land purchased by both petitioner as well as respondent no.1 pursuant to their respective sale-deeds. This ambiguity needs to be resolved as the controversy centers around the same. After arguing the matter for some time, learned counsel for the parties also agree that there needs to be a decision as regards this ambiguity.

3. In the circumstances, it would be appropriate that the learned Civil Judge appoints a surveyor to measure the land by taking into consideration the sale-deeds of petitioner and respondent no. 1 and such other documents that the learned Civil Judge deems fit or relevant. After the report is submitted and considered, further continuation of injunction can be considered.

4. In these circumstances, the writ petition is disposed of by directing the learned Civil Judge to appoint a TILR to carry out the task as indicated above and submit report to the learned Civil Judge. The learned Civil Judge will specify the scope of the enquiry by passing a suitable order before the appointment of the surveyor. After

the report is received, after giving opportunity to both the parties and after consideration of the report so received, the learned Civil Judge will decide whether to continue the injunction which is granted in favour of respondent no. 1 by passing an appropriate order. It is needless to state that till the order on injunction application, the injunction granted in this petition to continue. The learned Civil Judge will pass appropriate order of appointment of TILR within a period of four weeks from today. Registry to communicate the writ to the learned Civil Judge, expeditiously.

5. Writ petition is accordingly disposed of.

N.M. Jamdar, J.