

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

WRIT PETITION NO. 11142 OF 2018

SAKHUBAI KARBHARI RAKTATE
VERSUS
KALAVATI NAIVRUTTI NARODE THROUGH LRS VITTHAL NIVRUTTI
NARODE AND OTHERS

...
Advocate for the Petitioner : Mr.M.S.Shaikh h/f Mr.Deshmukh Sachin S..
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th October, 2018

Per Court:

1 The Petitioner/ original Defendant is aggrieved by the order of the Trial Court dated 07.08.2018 passed on the application Exhibit 88 in RCS No.494/1992. The Trial Court has allowed Exhibit 88 filed by the Plaintiffs and has appointed the Taluka Inspector of Land Records (TILR), Kopargaon as a court commissioner for re-measurement of the suit properties.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioner, who has drawn my attention to the several grounds formulated in the memo of the petition and the judgment of the Appellate Court dated 12.11.2007 delivered in RCA No.14/1998 by which, the suit was remanded to the Trial Court with a specific direction that the

Trial Court would appoint the TILR, Kopergaon as a court commissioner to carry out the joint measurement of the lands Gat Nos.113/1 and 112 situated at village Talegaon Mali, Taluka Kopergaon. Certain further directions were also issued in the said order, which is placed on record.

3 The Plaintiffs have filed Exhibit 88 for the reason that they received the notice for joint measurement of the lands for 24.05.2017. It was revealed before the Trial Court in the examination-in-chief of the Surveyor that he carried out the measurement on 24.05.2017 and admitted in the cross-examination that the measurement was carried out on 23.05.2017. In his re-examination also, the Surveyor clarified that he carried out the measurement on 23.05.2017, though the notice for measurement was issued for 24.05.2017.

4 I find that the Trial Court has rightly appreciated the directions of the Appellate Court that the TILR should be appointed for the joint measurement of the lands in Gat No.113/1 and 112. The Trial Court also noticed that the suit of the year 1992 and it was remanded back by the Appellate Court. In such circumstances, the Trial Court held that it would be a futile exercise, as yet another lacuna would creep in the adjudicatory process, if the lands are not remeasured. The Trial Court, therefore, realized that it would be necessary to take care of this deficiency before it is too late. Hence, the Trial Court ordered the appointment of the TILR as a court commissioner, which was clearly in

conformity with the directions of the Appellate Court.

5 Considering the peculiar facts as above, I find that the impugned order cannot be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

6 I find that the Appellate Court had directed the Trial Court to decide the suit within one year vide judgment dated 12.11.2007. Instead of one year, the parties have consumed 11 years.

7 In the above circumstances, I am issuing a specific direction to the learned Judge Shri D.P.Kasat, Civil Judge, Junior Division, Kopargaon, to decide RCS No.494/1992 on or before 31.01.2019. The Trial Court shall grant priority to this suit as it is 26 years old and shall refuse adjournments to the litigating sides if they are found to be based on unreasonable or trivial grounds. It may even impose costs if any litigant indulges in dilatory tactics. It is also made clear that the Trial Court shall not apply for extension of time.