

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11970 OF 2017

JAYASHRI GULABRAO DESHMUKH
VERSUS
BAPU SAHEBRAO MULE AND OTHERS

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Advocate for Petitioner : Shri Patil Pramod D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 05, 2018
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PER COURT :-

1. While issuing notices, this Court has passed an order on 3.10.2017, which reads as under:-

"1. The petitioner / plaintiff is aggrieved by the impugned order dated 9.8.2017, by which, the trial Court has rejected Exhibit 67, filed by the petitioner seeking appointment of the Court Commissioner, when the matter was reserved for advancing final arguments.

2. The petitioner has prayed for the measurement of Gut No.24 by appointment of the Deputy Superintendent of Land Records.

3. Issue notice before admission to the respondent, returnable on 24.11.2017. On the condition that the petitioner shall deposit an amount of Rs.10,000/ before the trial Court on/or before 31.10.2017, the trial Court shall adjourn RCS No. 118 of 2014. If the amount is not deposited, the trial Court shall proceed to decide the pending suit.

4. *No extension of time would be granted to the plaintiff.*

5. *The petitioner shall file copies of the petition paper book for issuance of notice on/or before 11.10.2017, failing which, this petition shall stand dismissed without reference to the Court on 12.10.2017."*

2. This Court has consistently taken a view that when it comes to joint measurements of the properties of the litigating sides and for fixation of boundaries, the Court Commissioner could be appointed after the recording of oral evidence is completed. Some of such orders are as under:-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991],

(3) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(4) Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(5) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and

others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014

3. Despite service of Court notice, none of the respondents have chosen to appear in this petition.

4. Considering the above and since Exhibit 67 was filed by the plaintiff seeking appointment of a Court Commissioner at the stage when recording of evidence was concluded, I find that this petition deserves to be allowed.

5. As such, this petition is allowed. The impugned order dated 9.8.2017 is quashed and set aside. Exhibit 67 is allowed to the extent of permitting the joint measurement of the properties of the litigating sides, for preparation of a map and for fixing of the boundaries.

6. As the petitioner has already deposited Rs.10,000/- before the trial Court before 31.10.2017 and as none of the defendants have appeared in this proceeding, the said amount would be utilized for the payment of the charges of the Court Commissioner, who shall not be below the rank of a Taluka Inspector of Land Records. The defendants

would not be entitled for any costs.

(RAVINDRA V. GHUGE, J.)

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akl/d