

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11419 OF 2018

JAHANGIRDAR SHABBIRKHAN PATHAN
VERSUS
JABIRKHAN SHABBIRKHAN PATHAN AND ANOTHER

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Advocate for Petitioner : Shri Kochar M.G.
h/f Shri Warma B.R.
Advocate for Respondent 1 : Shri Tripathi M.P.
h/f Shri Deshmukh Mahesh S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 16, 2018
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PER COURT :-

1 This matter was heard at length on 15.10.2018. It appeared that as the litigating sides are real brothers and educated persons, there was a possibility of arriving at some understanding. Hence this matter was adjourned for today.

2 The learned Advocates appearing for the respective sides submit as under:-

(a) The suit properties are plot Nos.30 and 31.

(b) The building that is constructed covers some portion of plot No.30 and some portion of plot No.31, as it is built in the

middle of the two plots.

(c) Plot Nos.30 and 31 can be measured by the Court Commissioner, the dividing line between these two plots can be located and that dividing line, which bisects the building can be marked on the building to identify the place of the division / joining point of plot Nos.30 and 31.

3 In view of the above, the impugned order dated 30.8.2018, rejecting application Exhibit 148 filed by the defendants seeking appointment of a Court Commissioner in RCS No.64 of 2013, is quashed and set aside. Application Exhibit 148 is partly allowed with the following directions:-

(A) The trial Court shall issue an order to the City Surveyor for carrying out the joint measurement of plot Nos.30 and 31. He shall identify the dividing line which is the line at which plot Nos.30 and 31 join each other. He would mark the boundaries of plot Nos.30 and 31 and by drawing a specific line between the two plots, he would make a marking on the building so as to identify the point at which one portion of the building falls in plot No.30 and another portion falls in plot No.31.

(B) The City Surveyor shall carry out the measurements in the presence of the parties on a specific date as may be fixed by the trial Court in consultation with the litigating sides.

Formal notices need not be issued.

(C) The City Surveyor shall submit his report and sketch map before the trial Court within six weeks from the date of the order of the trial Court.

(D) The litigating sides shall place a copy of this order obtained from the official website of this Court for the perusal of the trial Court, which shall pass the consequential order, within three weeks from today.

(E) All the parties shall equally share the expenses of the appointment of the Court Commissioner.

(RAVINDRA V. GHUGE, J.)

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