

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 WRIT PETITION NO. 10016 OF 2013

LATABAI SHRIRAM KAKDE AND OTHERS
VERSUS
BABURAO SONAJI GIRI

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Advocate for Petitioners : Mr. Sontakke Patil B.R.
Advocate for Respondent-sole : Mr. Milind K. Deshpande

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CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. By this Writ Petition, the petitioners/original defendants are challenging the order passed by the trial court below exhibit 115 in R.C.S. No. 2 of 2011.
3. The respondent/plaintiff has filed an application exhibit 115 for appointment of court commissioner. The trial court, by order dated 16.12.2011 below exhibit 88, has appointed the Deputy Superintendent of Land Records, Jalna as court

commissioner and accordingly, the suit land was measured and the report came to be submitted before the trial court. According to the respondent/plaintiff, even though the measurement report is submitted before the court alongwith the map and the concerned Surveyor has been examined before the court, it is not clear as to who has encroached upon the suit land to the extent of 86R from the western side and as such, re-measurement of the suit land is necessary to resolve the dispute between the parties finally. The petitioners/defendants have strongly resisted the said application by filing the say. However, the learned Judge of the trial court, by impugned order dated 08.08.2013, allowed the application exhibit 115. Hence this Writ Petition.

4. The learned counsel for the petitioners/original defendants submits that in terms of the order passed below exhibit 88 by the trial court, the Surveyor of the Land Records, Jalna has measured the land and submitted report alongwith the map before the trial court. Even the said Surveyor also came to be examined before the trial court as a witness. The learned counsel submits that thereafter, the respondent/defendant has filed the application Exhibit 115 with some ulterior motive to fill up the

lacuna. The learned counsel submits that the respondent/plaintiff neither challenged the entries in the 7/12 extract, nor impleaded all the interested persons in the suit as party defendants and as such, the application exhibit 115 for appointment of court commissioner was unnecessary and uncalled for. However, the trial court has erroneously allowed the said application.

5. The learned counsel for the respondent/plaintiff submits that though, as per the earlier order passed below Exhibit 88, the Surveyor of the Land Records office has carried out the measurement and submitted report, however, it has not been specifically mentioned in the report as to who has made encroachment upon the land gat no. 86 from its western side to the extent of 86R. It has been vaguely mentioned in the report and also deposed by the said Surveyor that one Mr. Choudhary and three others are in possession of the encroached portion of the land. Thus, as there is no clear statement as to who has encroached upon the land ad-measuring 86R from the western side of the suit land, it is not possible for the court below to resolve the dispute between the parties finally. The learned

Judge of the trial court has therefore rightly considered the same and allowed the application exhibit 115. No interference is required.

6. On careful perusal of the impugned order, it appears that the Surveyor, as per the report and the map submitted before the court in terms of the order passed by the trial court below exhibit 88, failed to clarify as to who has encroached upon the portion of the suit land from the western side to the extent of 86R. It appears that the dispute is about the said encroached portion ad-measuring 86R and the Surveyor has only stated in his report and also deposed before the court that one Mr. Choudhary and three others have encroached upon the portion of the suit land without specifying the exact area and the other details. Consequently, the learned Judge of the trial court has directed the Deputy Superintendent of Land Records, Jalna to measure the land gat no. 86 ad-measuring 1H 83R and to find out if any encroachment to the extent of 86R from the western side of the suit land and if such encroachment is there, as to who is in actual possession of the encroached area. In view of the same, I find no substance in this Writ Petition. This Writ Petition is

pending since 2013 and due to the interim order passed by this Court at the initial stage, the further proceedings in the suit are also stayed. In view of the same, I proceed to pass the following order.

The Writ petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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