

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14597 OF 2017

KASHIBAI W/O. DILIP MADANE
VERSUS
VIKAS MANIKRAO SUL AND OTHERS

Advocate for Petitioner : Mr. S.S. Panale.
Advocate for Respondent Nos. 1 & 2 : Mr. A.S. Kulkarni.

CORAM : RAVINDRA V. GHUGE, J.
DATE : 26th November, 2018

PER COURT :

1. The petitioner/original defendant No. 1 is aggrieved by the order dated 18/11/2017, passed by the Trial Court by which application Exhibit 146 filed by her seeking issuance of witness summons to the Deputy Superintendent of Land records, Latur in Special Civil Suit No. 26/2009, has been rejected.
2. I have heard learned advocates for the respective sides and have gone through the petition paper book with their assistance.
3. The record indicates that the plaintiffs as well as the defendant have led their evidence. Issue is that the plaintiffs are alleged to have tendered incorrect description/identification of the suit property. Defendant No. 1 has already examined two witnesses and does not

desire to examine any more witnesses, except the Deputy Superintendent of Land Records in order to prove the proper description of the suit property and the boundaries. The witnesses who have been examined have stated that they cannot conclusively assert the exact boundaries and identification of the suit land.

4. In this backdrop, in my view, since the recording of evidence is concluded, the appointment of a Court Commissioner for the joint measurement of the lands of the litigating sides and for fixing the boundaries, could be permitted in view of the law laid down by this Court in the following matters :

1. Sanjay S/o. Namdeo Khandare Versus Sahebrao Kachru Khandare & others [2001 (2) Mh.L.J. 959]
2. Kolhapuri Bandu Lakade Versus Yallappa Chinappa Lakade, since deceased through Pooja @ Poojari Y. Lakade and others [2011(3) Mh.L.J.]
3. Bento Antonio Gomes alias Antonio Bento Gomes Versus Rosario Salvador Carneiro and others [2014 (4) Mh.L.J.]

5. Learned advocates for the petitioner and the original plaintiffs submits that they are agreeable to request the Trial Court for appointment of a Court Commissioner for the joint measurement of the suit properties and the properties of the defendants. The plaintiffs would move an application for the said purposes. The TILR could be

appointed as the Court Commissioner and the litigating sides shall equally share the charges for appointment of a Court Commissioner.

6. The plaintiffs submit that they would move a proper application before the Trial Court to bring the LRs of deceased/original defendant No. 2 – Uma Vajjnath Solankar on record in the suit.

7. In view of the above, this petition is disposed of with liberty to the plaintiffs to move an application for appointment of a Court Commissioner as noted above, within three weeks from today. By consent of the parties the Trial Court would appoint the concerned TILR as a Court Commissioner and the charges shall be paid by the litigating sides. The exercise of the appointment of the Court Commissioner and submission of his report and map shall be concluded on/or before 28/02/2019, and the Trial Court shall thereafter endeavor to decide Special Civil Suit No. 26/2009, on/or before 31/07/2019.

(RAVINDRA V. GHUGE, J.)