

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6532 OF 2013

Kedari Nivrutti Kamble	...	Petitioner
V/s.		
Shivaji Dattu Kamble & Ors.	...	Respondents

- Mr.Ashutosh M. Kulkarni for the Petitioner.
- Mr.Shrishail Sakhare for Respondent Nos.1 to 5, 6A, 6B, 7 to 9, 12A to 12D, 13 and 14.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th APRIL, 2018.

ORDER :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondent Nos.1 to 5, 6A, 6B, 7 to 9, 12A to 12D, 13 and 14.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 11th February 2013 passed by the Court of Civil Judge, Junior Division, Tasgaon, District : Sangli, below the application at Exhibit-168 in Regular Civil Suit No.208 of 2004.

3] The said application was preferred by the present Petitioner, who is the Plaintiff before the trial Court for seeking some

explanation from the T.I.L.R., who was appointed as Court Commissioner, in respect of his 'Report' and the 'Map'. It was submitted that, as per the order passed by the trial Court on 1st October 2011 below the application at Exhibit-135, the cadastral Surveyor i.e. T.I.L.R. was appointed as Court Commissioner and directed to take joint measurements of the suit properties described in paragraph No.1(A) of the plaint, as well as the properties of the Defendants in the eastern side of the suit property and to ascertain if there is any encroachment over the suit property. It is submitted that, though the T.I.L.R. has carried out the measurement of the suit property, he has not complied with this order of the trial Court. He has not shown the measurement nor the boundaries of the properties and his map is also not showing any encroachment and therefore, the necessary explanation be called from the T.I.L.R..

4] The trial Court has rejected this application, and in my considered opinion, rightly so. If there is no encroachment in the eastern side, then the T.I.L.R. is not expected to show such encroachment, because the order of the trial Court itself shows that he was to ascertain, if there is any encroachment over the suit property. The fact that his report and the map does not show any encroachment, necessarily follows that there is no such encroachment; even

otherwise whatever the grievance against the report and the map, he can sufficiently brought them on record during the evidence. The T.I.L.R. may give whatever the explanation, the Petitioner is seeking from him as regards the condition over the suit property including the width and length or the boundaries of the suit property. For that purpose there is no need of obtaining such explanation in advance. Hence, the trial Court has rightly rejected the Petitioner's application. In view thereof, no interference is warranted therein.

5] Therefore, Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]