

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

WRIT PETITION NO.9309 OF 2018

Satish A. Nirmal

... Petitioner

Vs

Bhanudas S. Mane and Ors.

... Respondents

...

Mr. Surel S. Shah for the Petitioner.

Mr. Vishwanath Talkute for the Respondent No.1.

Mr. Y.S.Khochare, AGP for Respondent Nos.2 and 3.

CORAM : A.S.OKA &

SANDEEP K. SHINDE JJ.

DATE : 5 DECEMBER, 2018

P.C. :

Notice for final disposal was issued on 25th October, 2018.

2 The Petitioner made an application to a Survey Officer under the Maharashtra Land Revenue Code, 1966 (for short '**the said Code**') claiming to be a co-owner/joint owner of the land bearing Gat No.244 admeasuring 5 Hectare and 38 R at Village Tarapar, Taluka Pandharpur, District Solapur. In the application for carrying out measurements, the Petitioner disclosed the name of the

first Respondent as his co-owner or co-sharer. The first Respondent raised objections in writing to the employees of the Survey Department who came to carry out the survey. One of the objections was that he has not consented to carry out survey and secondly, Gat No.244 has been divided into several hissa numbers. The report of the concerned surveyor annexed at Exhibit 'C' shows that the first Respondent raised objection to carry out survey and, therefore, the survey could not be carried out.

3 We have heard the learned counsel appearing for the parties. The learned counsel appearing for the first Respondent submits that there are civil disputes pending between the parties and apart from the objection which is already raised, any order passed in the said Petition will affect civil disputes pending between the parties.

4 We have considered the submissions. Even if a survey is carried out by the Survey Officer under the said Code

notwithstanding the objection raised by the first Respondent, the act of carrying out survey does not in any manner affect the claim made by the parties in respect of title to the property surveyed.

5 At the time of survey, the first Respondent can always remain present and point out his objection that the Gat No.244 has been divided into several hissa numbers and therefore, the measurement as prayed cannot be made. It is for the Survey Officer to deal with such objection. If he finds that the measurement and survey of entire Gat No.244 cannot be carried out, he can always inform the Petitioner accordingly and submit a report to his superior officer.

6 However, the Survey Officer under the said Code cannot refuse to carry out survey only on the ground that the first Respondent has objected.

7 In view of what is observed above, we dispose of the

Petition by passing the following order:

(i) We direct the second Respondent to fix a fresh date of survey and issue advance notice of the date fixed to the Petitioner and the first Respondent as well as to other persons whose names are disclosed in application at Exhibit 'A';

(ii) At the fixed time and the date, the first Respondent and others, if any, will be entitled to remain present and will be entitled to raise an objection that it is not possible to carry out survey and measurement of Gat No.244. The concerned Survey Officer shall take into consideration the said objection as observed in this judgment;

(iii) Even if a survey and measurement are carried out in terms of the application made by the Petitioner, the parties can always challenge the same by taking recourse to the appropriate remedies;

(iv) Merely because a survey is carried out by overruling objections of the first Respondent or merely because the Survey Officer refuses to carry out survey on the basis of the objection of the first Respondent, rights of the parties to the property will not be affected in any

manner whatsoever;

(v) The Petition is disposed of with the above directions.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)