

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

WRIT PETITION No.7085 OF 2012

Shri Arif Dada Memon

... Petitioner

Vs.

Shri Mohsin Sikandar Patel & anr.

... Respondents

Mr.Amit Sale for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 4, 2018**

P.C. :

1. Rule, made returnable forthwith and heard finally.
2. This petition is directed against the order dated 6.7.2012 passed by the learned Civil Judge Junior Division, Wada, passed below exhibit 40 in RCS No.98 of 2009, thereby rejecting the application made by the plaintiff seeking directions to the Court Commissioner to demarcate the boundaries on the suit land pursuant to the Commissioner's report and the Commissioner's measurement work, which was carried out on 5.12.2011.
3. The learned Counsel for the respondents is absent. At the outset, it is necessary to mention that the order of challenge is

passed in July, 2012. The learned Counsel for the petitioner, on query, submitted that no stay was granted to the proceedings before the trial Court, however, he makes a statement that as on today, the Suit is pending. In view of this statement, the submissions made by the learned Counsel, are considered.

4. The learned Counsel has submitted that he has filed the suit for simpliciter injunction in which his application for appointment of the Court Commissioner was allowed by order dated 9.12.2010 by the learned Civil Judge Junior Division. While allowing that application, the learned Judge has directed the District Inspector of Land Records to measure the suit land, as per rules, and to fix the boundary marks; prepare map; record statement and panchanama and report to the Court. The Commissioner had carried out the measurement work on 5.12.2011; prepared the map, recorded statement and panchanama. However, he did not fix the boundary marks but he submitted the report dated 9.3.2011. The petitioner thereafter filed application below exhibit 40 requesting the Court to ask the Commissioner to demarcate or fixing the boundary marks. The learned Judge rejected the application. The learned Counsel submits that the said order is illegal and the entire controversy can

be resolved if the boundary marks are fixed by the District Inspector of Land Records.

5. Though called out, none present for the respondent.

6. It is a suit for injunction. There are pleadings in the plaint that the plaintiff was trying to demarcate his land by fencing around on the boundaries, however, he was obstructed by the respondents-defendants. In view of the nature of the obstruction, earlier order passed by the trial Court directing the Court Commissioner to fix the boundary marks is to be complied with by the DILR.

7. In the circumstances, Rule is made absolute with the following order:

ORDER

a) The District Inspector of Land Records is directed to visit the suit land and pursuant to the report of the Court Commissioner and the map prepared by the earlier Court commissioner on 5.12.2011. The DILR shall fix boundary marks of the suit land.

b) The District Inspector of Land Records is directed to give notice to the respondents/defendants and also to all concerned persons. The work of the Commissioner fixing boundaries is to be carried out on or before 14.8.2018 and the report be submitted to the Court.

c) The charges of the District Inspector of Land Records is to be borne by the plaintiff.

8. With the above directions, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)