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

WRIT PETITION NO.11387 OF 2017

Balasaheb Malhari Pawar	...	Petitioner
V/s.		
Shri. Madhukar Sampati Pawar	...	Respondents

Mr. Vaibhav Ugle, for the Petitioner.
Mr. Vishwanath S. Talkute, for the Respondent
No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondent.

2] By this petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 16th June, 2015 passed below Exh.17 and the order dated 15th September, 2017, passed below Exh.27, in R.C.S.No.820 of 2012 by the Court of Civil Judge Junior Division, Solapur.

3] Application at Exh.17 was filed by respondent herein for appointment of T.I.L.R. as Court Commissioner to measure the suit

land bearing Gat Nos.581/1 and 582 and to fix the boundary marks. The said application was allowed on 16.6.2015. However, though the T.I.L.R. measured the lands, he had not fixed the boundaries of the suit land, hence respondent filed another application at Exh.27 for fixing the boundaries of the said land by appointment of T.I.L.R.. As the said application is allowed on 15.9.2017, the present writ petition is filed.

4] The main contention raised by learned counsel for the petitioner is that the suit itself is not tenable as the only prayer made in the suit is that the land bearing Gat No.581/1 be measured by T.I.L.R., and its boundaries be fixed. Submission of learned counsel for petitioner is that without claiming the reliefs of declaration of title and possession over the suit land and even without seeking relief of injunction, the suit simpliciter for measurement of the land for the purpose of fixing boundaries thereof, cannot be tenable.

5] To substantiate this submission learned counsel for the petitioner has relied upon the judgment of of Kerala High Court in **Kunhikannan Nambiar -vs- M.V. Janaki Amma**, in **Second Appeal No.725 of 1995 dated 18th September, 2009**, wherein it has been held that the Court cannot fix the boundary and then direct the parties to settle other disputes regarding the title and possession

and hence simple suit for fixing the boundaries, when their title of the suit property is disputed, cannot be tenable. However, in paragraph No.4 of the judgment, it was held that, *“No doubt suit for fixation of boundary is maintainable. That is because it is a suit of civil nature as defined in Section 9 of the Code of Civil Procedure. Fixation of boundary does not involve any other dispute regarding title or possession. It is when the parties have no other dispute regarding title or possession but, they are unable to agree on the boundary between the properties that question of fixation of boundary would arise. In such situation, therefore, suit simpliciter for fixing of boundaries is maintainable”*.

6] Learned counsel for the respondent has also in this respect relied on the judgment of this Court in **Antonio Filipe Vaz and ors -vs- Comunidade of Margao, through its Attorney Margao and ors, [1999 (1) Bom CR 537]**, where the issue raised for consideration was whether the suit for demarcation of simpliciter without any prayer of declaration is maintainable? While answering this issue, in paragraph No.7 of the judgment, it was held as follows :-

“7. Coming to the second contention, it relates to the maintainability of the suit. According to Shri Singh, a suit for demarcation simpliciter without any relief of declaration is not maintainable. There is, however, no substance in this contention.

As rightly pointed out by Shri.Usgaonkar, the relief of demarcation implies that the plaintiff claims to be the owner of the property. Consequently it is unnecessary and redundant for the plaintiff to seek the relief of declaration of his title also. Of Course, the plaintiff will not get the relief of demarcation unless and until he proves his title to the property which is sought to be demarcated. Hence, the second contention of Shri. Singh also deserves rejection:".

7] Thus, if there is no dispute relating to the ownership, title or possession over the suit land, then suit simplicitor for measurement of the land and for fixing of its boundaries can be tenable. In the present case also, according to respondent, there is no other dispute relating to ownership or possession and hence the only prayer made by him in the suit is for fixing of the boundaries after measurement of the suit lands.

8] Now law is fairly well settled that for fixing of the boundaries and also for measurement of the land, expert witness is that of T.I.L.R., who needs to be appointed as Court commissioner. Accordingly the trial Court, has vide its earlier order, passed below Exh.17, appointed T.I.L.R.. The petitioner has not challenged the said order and it is a matter of record that thereafter T.I.L.R. has carried out measurement of the suit land. However, while doing so, he has not fixed the boundaries. Hence application was filed by respondent for

giving direction to the T.I.L.R. to fix the boundaries, so that the dispute between the parties can be resolved finally.

9] In pursuance thereto, the trial Court has passed the order below application Exh.27, directing the T.I.L.R., to fix the boundaries of the said land.

10] In my considered view, the subsequent order passed by the trial Court on 15.9.2017 is a consequential part of the earlier order passed on 16th June, 2015, for appointment of T.I.L.R. as Court Commissioner and as that order has attained finality, the petitioner cannot challenge the same in this writ petition. There is also no substance in the challenge raised by the Petitioner either to the earlier or to the subsequent order.

11] The only contention raised by learned counsel for the petitioner is that the trial Court observed that the correctness of the report of surveyor has to be proved by calling him as witness. In the instant case, it is submitted that if T.I.L.R., is called as a witness and if it is found that his report is not correct, the trial Court would again appoint T.I.L.R. for fixation of boundaries.

12] However, in my considered opinion, this contention also cannot be accepted, as the second application was allowed not on the

ground that measurement made by T.I.L.R, is not correct, but only on the ground that T.I.L.R., has not fixed boundaries, which he was called upon to do by order passed below Exh.17 which order he has failed to comply; hence to make him comply with the order.

13] In this view of the matter, therefore, no fault can be found in the impugned order of the trial Court.

14] The writ petition, being without any merit stands dismissed.

15] At this stage, learned counsel petitioner requests this Court to extend the order of status quo for further period of four weeks.

16] Learned counsel for respondent opposed the said prayer.

17] I do not think that any ground is made out to extend the order of status quo. In view of the reasons stated above, the said prayer is rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]