

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.764 OF 2018

Shivaji S/o Nathu Kholase

Petitioner

versus

Punja s/o Laxman Kholase

Respondent

...

Mr. Abhijit Choudhary h/f Mr. P.A. Bharat advocate for the petitioner
Mr. N.D. Batule h/f Mr. S.V. Natu advocate for respondent.

...

CORAM : **RAVINDRA V. GHUGE, JUDGE**
(Date : 20th MARCH, 2019)

PER COURT :-

1 After this matter was heard at length on 18.3.2019, it was expressed by the Court that, Application Exhibit 18 filed by the respondent-appellant, seeking appointment of the Court Commissioner, can be heard along with RCA No.177/2016, since an issue of leading additional evidence would arise and this aspect would be covered by order 41 rule 27 of the Civil Procedure Code.

2 The Learned counsel for the respondent had sought time to take instructions.

3 Today, the learned counsel for the respondent submits that, if all the contentions of the respondents are kept open, for rehearing of Exhibit 18, without being influenced by any other factor, the said application may be heard along with the appeal.

4 It is obvious that, if a Court Commissioner is appointed during the pendency of an appeal and if any party is to dispute the report/measurement or the map, additional evidence will have to be led. This would be covered under Order 41, Rule 27 of C.P.C.

5 In these circumstances, the law laid down by the Honourable Apex Court in the following judgments, would apply:-

(a) Malyalam Plantation Limited versus State of Kerala (AIR 2011 SC 559)

(b) Union of India versus Ibrahim Uddin & another (2012 (8) SCC 148)

(c) A. Andiswamy Chettiar versus A. Suburaj Chettiar (AIR 2016 SC 79).

6 I quite see from the impugned order that the learned Advocates appearing before the appellate Court had not properly assisted the Court by citing reported judgments. I also find it proper to note that in the event, the trial Court considers Exhibit 18 and is inclined to appoint a Court Commissioner, it would avoid appointing an Advocate, since the measurement of the immovable lands in the light of the revenue record, requires expertise and this would be available with the TILR or any such officer of the revenue department.

7 In view of the above this petition is partly allowed only on the ground that Exhibit 18 be reheard and decided afresh along with RCA No.177/2016. On this count, the impugned order dated 25.10.2017 is set aside. Needless to state, all the contentions of the litigating sides are kept open to be considered by the appellate Court.

**(RAVINDRA V. GHUGE),
JUDGE**

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