

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 727 OF 2014

Daulatram Hotchand Sindhi,
 Age : 65 Years, Occ. Business and
 Chairman, Puja Bubak Sindhi Panchayat
 R/o. Old Sindhi Colony, Nandurbar.

..PETITIONER

VERSUS

Mrs. Injanabai W/o Dayaldas Davani,
 Died, Through Lrs:

1. Dayaldas Bholaram Davani,
 Age : 62 Years, Occ. Business,
2. Sunil Dayaldas Davani,
 Age : 39 years, Occ. Business,
3. Sachin Dayaldas Davani,
 Age : 22 Years, Occ. Business,
4. Sau. Jamna W/o Suresh Ramchandani,
 Age : 37 Years, Occ. Household,

Respondents No.1 to 4 above are
 R/o. Sindhi Colony, Nandurbar

5. Sau. Leela W/o Rajkumar Tejawani,
 Age : 40 Years, Occ. Household,
 R/o. Himmatnagar, Station Road,
 Himmatnagar, Dist. Sabarkatha
 (Gujarath).
6. Sau. Anita W/o Manjumaal Rajwani,
 Age : 35 Years, Occ. Household,
 R/o. Salim Colony, Barhanpur,
 Tal. & Dist. Barhanpur (M.P.).

..RESPONDENTS

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Advocate for Petitioner : Mr. S. R. Mantri
 Advocate for respondent Nos. 1 to 3 : Mr. S.V. Natu

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CORAM : T.V. NALAWADE J.
DATE : 11-02-2019.

JUDGMENT(PER T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The submissions made and record show that the suit is filed against the present petitioner for relief of permanent injunction by respondent No.1. The suit was dismissed and the appeal was filed in the District Court. The decision given by the trial Court was set-aside by District Court. The District Court has remanded the matter with direction like framing of few issues, for allowing the plaintiff to call the Tahsildar with relevant record and if necessary, to examine him and also apply the Court for getting appointment of the Court Commissioner. There is dispute over the exact area allotted to the plaintiff by the Government from Survey No. 170.

3. The submissions made and record show that after remanding of the matter, both the sides filed pursis of closure of evidence and after that, the plaintiff sought order of appointment of the Court Commissioner. It appears that Tahsildar then produced his report along with hand sketch map showing the present position of the subject property. It appears that the trial Court made order on Exh. 149 and

gave exhibit to this record of Tahsildar, but gave liberty to the defendant to apply for calling Tahsildar for cross-examination.

4. This Court has carefully gone through the so called report prepared by the Tahsildar and hand sketch map. That record was not prepared under the provisions of the survey and this is not the record which is ordinarily prepared by the revenue department. It can be said that he acted as Court Commissioner and prepared the report and also prepared the approximate hand sketch map. When there is such record and when such record is not admitted by other side like defendant, it is necessary for the party who is interested to prove the record to call the person who has prepared the record for proof of that record. That is not done by the plaintiff. Due to this circumstance, this Court holds that the order made by the learned Judge of the trial Court for giving exhibit to the said record when that record is not proved cannot sustain in law. So, the petition is allowed. The order passed by the learned Civil Judge, Senior Division, dated 31.12.2014 on Exh. 149 of the Regular Civil Suit No. 75 of 1999 is hereby set-aside. Liberty is given to the plaintiff to call the aforesaid person Tahsildar for proof of record including the map prepared by him. There will be opportunity to other side to give evidence in rebuttal.

5. Rule made absolute in above terms.

6. It is made clear that both the sides are entitled to lead evidence as per the order which was made by the District Court.

[T.V. NALAWADE]
JUDGE

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