

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 2474 OF 2018

GANGADHAR NABAJI BHOKNAL AND ANOTHER
VERSUS
BADSHAH NABAJI BHOKNAL AND OTHERS

.....
Advocate for Petitioners : Mr. Rajendra K. Temkar
Advocate for Respondents 1 to 10: Mr. A.N. Nagargoje
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CORAM : V. K. JADHAV, J.
DATED : 7th NOVEMBER, 2019

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. On perusal of the order dated 26.6.2015 passed below Exh.86 in Regular Civil Suit No. 56 of 2009, it appears that the trial court has given specific directions to the Court Commissioner with regard to measurement of the suit land so also the encroachment, if any, made on the suit land. The petitioners-original plaintiffs had filed application Exh.86 and accordingly the trial court has passed the aforesaid order on the said application. It further appears that the Court Commissioner, though submitted the report, however, shown an area under cultivation of the survey No. 32/1/1 as 1 H 90 R as against the total area of 2 H 43 R. It is thus apparent that the area admeasuring 53 R has been reduced. Admittedly, there is no reference in the report of the Court Commissioner nor it is shown in the map as to what is the present position of the said area which is shown to have

been reduced. It thus appears that the Court Commissioner has not followed the directions given by the trial court.

3. Learned counsel for the respondents-defendants has resisted the application on various grounds and prayed for dismissal of the writ petition. However, in the alternate he submits that in case this Court is inclined to allow the writ petition, direction be given to execute the commission to the extent of the said area shown to have been reduced and as to the encroachment on the said area, if any.

4. Thus, considering entire aspects of the case and since the Court Commissioner has not followed the directions given by the trial court, I am inclined to allow this writ petition to the extent that the Court Commissioner has not followed clause No.4 of the order dated 26.6.2015 passed by the trial court below Exh.86.

5. In view of the same, application Exh.101 deserves to be allowed to that extent only. Hence, the following order:-

O R D E R

I. The order dated 27.09.2017 passed by the learned Joint Civil Judge, Senior Division, Sangamner below Exh.101 in Regular Civil Suit No. 56 of 2009 is hereby quashed and set aside.

- II. The application Exh.101 is partly allowed to the extent that the Court Commissioner shall be appointed for re-measurement to the extent of clause 4 of order dated 26.6.2015 passed below Exh.86 in R.C.S. No. 56 of 2009.
- III. The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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