

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7924 OF 2017
(Sanjay Rajaram Rathod Vs. Bandu @ Shankar s/o Prakash Jadhav
and others)

Mr.M.P.Kale, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/06/2019

PER COURT :

1. The petitioner/ original plaintiff in RCS No.372/2007 is aggrieved by the order dated 07/02/2017 passed by the Trial Court, vide which his application for seeking appointment of a Court Commissioner for the second time and in the alternative direct the earlier Court Commissioner to once again carry out the activity of measurement of land u/s 151 of the Code of Civil Procedure, has been rejected.

2. None for the respondents.

3. I have considered the strenuous submissions of the learned Advocate for the petitioner, who has criticized the impugned order. Contention is that the earlier Court Commissioner, who was the TILR, has not properly measured the suit lands and the immovable

agricultural fields of the litigating sides. The Trial Court had directed the TILR to carry out the measurement vide order dated 16/02/2010. The measurement, report and the map produced by the TILR on record, are not in satisfaction of the directions issued by the Trial Court. Considering such contentions, the Trial Court has recorded that pursuant to its order dated 16/02/2010, the TILR has measured the suit property and has submitted his report on 25/03/2010. For 7 years, the plaintiff has not questioned the said measurement and the map.

4. Notwithstanding the above, it is settled Law that any party aggrieved by the report of the TILR or his measurements or the map, has the liberty of examining the TILR while recording oral evidence so as to establish before the Trial Court that the measurements, the report and the map are unreliable and cannot be of any utility to the Trial Court while adjudicating the suit. It is on account of the petitioner approaching this Court that this Court (Coram : Sunil P.Deshmukh, J.) has stayed RCS No.372/2007. In view of the said order, further recording of oral evidence of the plaintiff was adjourned.

5. This Court has consistently held in the following orders/

judgments that a Court Commissioner should normally be appointed after the recording of oral evidence has concluded and only in the event, the Trial Court finds it necessary to take the assistance of the Court Commissioner :-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) *Nalubai Shinde and others Vs. Gopinath Shinde* [2011(2) Mh.L.J.991],

(3) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar*, 2017 (3) Mh.L.J. 314.

(4) *Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*

(5) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.*

6. In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous and especially when the plaintiff has the liberty to prove before the Trial Court that the TILR's report and measurement are not reliable.

7. As such, this petition is dismissed.

8. In the event any of the litigating sides moves an application for

appointment of a Court Commissioner for the second time after the recording of oral evidence has concluded, the Trial Court would consider the application in the light of the evidence on record and only if it finds that the earlier measurement/map and the report of the TILR are not reliable.

(Ravindra V.Ghuge, J.)