

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO. 9212 OF 2018

SHARAD MACHINDRA LANDGE AND ANOTHER
VERSUS
RAOSAHEB RAMCHANDRA SHINDE

.....

Advocate for Petitioners : Mr. Bedre Vinayak Sudhakar
Advocate for Respondent-sole : Mrs. Manjusha S. Jagtap

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CORAM : V. K. JADHAV, J.
DATED : 17th December, 2019

PER COURT:-

1. Heard both sides.
2. It appears that the respondent/plaintiff has filed an application Exhibit 45 in Regular Civil Suit No. 313 of 2013 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of T.I.L.R., Shrigonda as court commissioner. The respondent/plaintiff has given reference in the application about the subsequent events after institution of the suit and specifically contended in the application Exhibit 45 that despite the order of temporary injunction, the petitioners/defendants had encroached upon the portion of the suit land and made construction of a farm pond.

3. Learned counsel for the petitioners/defendants submits that the petitioners/defendants have no fear about measurement of the suit land so also the land owned and in possession of the petitioners/defendants. However, the petitioners/defendants have brought to the notice of the trial court by way of their pleadings in the written statement that so far as the land gat no. 80 is concerned, the Government has constructed a road on some portion of the land gat no. 80 and also constructed a water channel. Learned counsel submits that if the said area of land gat no. 80 has been utilized for the purpose of construction of the road and the water channel, then, the area of land gat no. 80 would be bound to be less and in that event, there may not be a clear picture of encroachment, if any.

4. In view of the above, by consent, the impugned order is modified to the effect that in terms of the order dated 10.04.2018 passed by the court below Exhibit 45 in Regular Civil Suit No. 313 of 2013, the court commissioner shall also measure and consider the portion of land gat no. 80 if utilized for the purpose of construction of road and water channel and if it is not, then, measure the land gat no. 80 to the extent as directed by the court.

With this modification in the impugned order, the Writ Petition is disposed off. Rest of the order dated 10.04.2018 passed below Exhibit 45 in Regular Civil Suit No. 313 of 2013 stands confirmed.

(V. K. JADHAV, J.)

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