

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7323 OF 2019

SAYYED MANJOOR AHMED MAZHAROODIN
VERSUS
TAHERA DAGADU MULANI AND OTHERS

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Advocate for the Petitioner : Shri P. F. Patni

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th JUNE, 2019.

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PER COURT :

1. The petitioner – original plaintiff is aggrieved by the impugned order dated 15/02/2019 passed by the Trial Court, vide which, application Exhibit 57 filed by defendant No. 2 in RCS No. 11/2015 seeking appointment of a court commissioner, has been allowed.

2. It is further contended that the defendant has admitted the possession of 34 sq. mtrs. suit land and the defence is that the defendant has a longstanding possession and hence they have perfected their title by adverse possession. In this backdrop, the onus and burden would lie on the defendants to prove longstanding possession which is the essence of gaining

a title by adverse possession. For this purpose, appointment of a court commissioner for a joint measurement of the properties of the litigating sides is not necessary. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of ***Hemaji Waghaji Jat Vs. Bhikhabai Khengarbhai Harijan and Ors., AIR 2009 SC 103***, to support the contention that the requisites of adverse possession are to be seen by the Trial Court.

3. It is settled possession of law that a court commissioner can be appointed after the recording of oral evidence is concluded. In the instant case, Exhibit 57 has been filed after the recording of oral evidence was closed by the parties. The TILR had earlier measured the suit property prior to the institution of this suit and that record was before the Trial Court, *inasmuch* as, the TILR was also examined.

4. Appointment of a court commissioner at a stage after recording of oral evidence, is within the discretionary power of a Court. If it is of the view that it would derive some assistance from such appointment, the Court may consider

appointing a court commissioner.

5. In the instant case, if the Trial Court is of the view that C.T.Survey Nos. 311, 312 and 313 required to be subjected to a joint measurement so as to identify the properties by the aid of a map and the measurement details, I do not find that the Trial Court can be said to have committed a patent error in law. In *Hemaji Waghaji (supra)*, the law as regards perfecting a title by adverse possession has been crystalized. The law ought not to benefit a person who in a clandestine manner has taken the possession of the property. This aspect can be looked into by the Trial Court while deciding the suit and the report of the court commissioner as well as the map would throw light upon the exact boundaries of the properties and the amount of land in possession of the litigating sides.

6. Merely because a second view is possible, would not mean that this Court must cause an interference. Unless the impugned order appears to cause grave injustice to a litigant, the same need not be interfered.

7. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

8. I find from the impugned order that the Trial Court has given a time frame to the defendants to deposit the amount. The learned Advocate for the petitioner makes a grievance that his suit is unduly delayed by the act of the defendants in not depositing the said amount.

9. I find that it is obvious that if an order of the Court is not complied with and if an application under Section 148 of the Code of Civil Procedure is not filed for seeking enlargement of time, the order would lose its efficacy.

(RAVINDRA V. GHUGE, J.)

shp/-