

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10946 OF 2019

KISHOR VITHALRAO GIRWALKAR
VERSUS
VISHNUPANT RAMKRUSHNA WATTAMWAR THROUGH LRS
SUBHASH VISHNUPANT WATTAMWAR AND OTHERS

Mr.R.S.Deshmukh, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2019

PER COURT :

1. The petitioner/original defendant No.5 is aggrieved by the order dated 02/04/2019 passed by the Trial Court, by which application Exh.474 filed in Spl.C.S.No.12/2016 (Old No.59/2003) has been rejected. As such, the request to appoint a Court Commissioner has been turned down by the Trial Court.

2. The petitioner has raised a host of factors right from an earlier Spl.C.S.No.19/2000 to which he is not a party. He has referred to the grounds set out in the memo of the petition contending that the impugned order, rejecting the application, is unjustified. It is contended that there are boundary disputes. The petitioner is a

subsequently added defendant. Recording of oral evidence in the matter has been concluded and a Court Commissioner could be appointed. The earlier measurement maps placed on record are disputed.

3. I find from the record that the petitioner claims to be the owner of the property in S.No.349/D. He has come before the Court pleading that the suit property set out in the map, that he has produced, is correctly demarcated. The boundaries of the suit property are also stated. The Trial Court has recorded that the case of this petitioner is that the revenue record is correct because the TILR has issued the measurement map and prepared a *Teepan Utara*. This record is available before the Court.

4. The plaintiff has submitted a measurement map which is prepared by the Surveyor from the Land Record Office, Beed, after the measurement in 1973 in respect of the Survey No.364. According to the petitioner, on the southern side of S.No.349-D, Survey Nos. 364-D and 349-A are situated. He has produced a map alongwith his counter claim.

5. The record also reveals that pursuant to the application filed by

the plaintiff, a measurement took place in measurement case No.2034/2001 in S.No.349. Copy of that measurement map dated 09/09/2002, is at Exh.445

6. There was an earlier measurement Case No.1331/1996 when Survey No.349 was measured on 12/05/1997. The map is placed on record at Exh.442 after the measurement was carried out by the Land Record Authority, Ambejogai. Neither the plaintiff nor this petitioner have challenged the said map at Exh.342 and the one at Exh.345. In fact, the petitioner led evidence through one Mr.Landge and has referred to the map Exh.442.

7. In the light of the above, I do not find that the Trial Court has committed any error in concluding that this petitioner as well as the plaintiffs have not challenged the 2 measurement maps at Exh.442 and 445.

8. Considering the above, the Trial Court will now be required to go into the respective averments of the litigating sides and take into account the available maps and eventually decide as to which of these maps would be the correct reflection of the suit properties.

9. As such, this petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)