

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

WRIT PETITION NO.9986 OF 2018

Sayed Jalal Sayed Amin,
Age : 47 years, Occupation : Agri,
R/o Walur, Tq.Sailu,
District Parbhani.

...PETITIONER
(Orig.Defendant)

-VERSUS-

Abdul Aatik s/o Abdul Latif,
Age : 27 years, Occupation : Agri,
R/o Walur, Tq.Sailu,
District Parbhani.

...RESPONDENT
(Orig.Plaintiff).

...

Advocate for the Petitioner : Shri Choukidar S.R.

Advocate for the Respondent : Shri Nitin Jagadale h/f Shri Salunke V.D.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th February, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner, who is the original Defendant in RCS No.50/2016, is aggrieved by the order dated 23.01.2018 passed by the Trial Court by which, the application Exhibit 5 filed by the Respondent/

Plaintiff has been allowed. The Petitioner is also aggrieved by the order dated 03.08.2018, delivered by the Appellate Court by which, his Miscellaneous Civil Appeal No.14/2018 has been dismissed.

3 I have heard the learned Advocates for the respective sides for quite some time on 25.02.2019 and today.

4 The Petitioner/ original Defendant (Sayed Jalal) claims possession and ownership over the land bearing Survey No.297/C (old Survey No.367/C) admeasuring 40.47 R and the sole Respondent/ original Plaintiff (Abdul Aatik) claims possession and ownership over Survey No.297/D only to the extent of 41 R as he has already sold 40 R land to one Jagdish Raghvendra Deshpande. All these properties are found in common Survey No.297.

5 The record reveals a peculiar situation in the case in hand. Though these two parties do not dispute their individual shares of the lands Survey No.297/C and 297/D, respectively, the Plaintiff is of the view that the Defendant is likely to dispossess him and the Defendant is of the view that the Plaintiff is likely to dispossess him. The Defendant (Sayed Jalal) contends that in between the land held by Jagdish Deshpande admeasuring 40 R and the land of the Defendant admeasuring 40 R, there is no land existing. The portion appearing in the sketch map between the properties of these two persons is infact a road. The Plaintiff (Abdul Aatik) contends that there is no road in between the lands held by

Jagdish Deshpande and the Defendant. It is on these premises that the dispute has occurred.

6 The case takes a further curious turn on account of the order passed by the Trial Court dated 01.02.2019 on an application dated 25 filed by the Plaintiff (Abdul Aatik) seeking police protection to enter his land in Survey No.297/D. The Trial Court has observed in paragraphs 5 and 6 that though on the one hand, these parties are not willing for joint measurement, on the other hand, there is a dispute between the parties to the extent of their possession over the lands and it has become very difficult to identify the exact location of the lands of both these litigating sides. The Trial Court, therefore, refused to grant assistance of the police and relied upon the report sent by the Sailu Police to the Superintendent of Police, Parbhani bearing O.No.3457/2018 that the exact location and possession of the lands is circumspect and unless there is a joint measurement of the lands through the Taluka Inspector of Land Records, who is the competent authority, it would be difficult to identify the respective lands of these litigating sides.

7 This Court has consistently held that the court commissioner can be appointed only after the recording of oral evidence is concluded and in the event the Trial Court finds that it would be advisable to take assistance of the Court Commissioner. However, this is apparently a peculiar situation wherein, even the Trial Court is finding difficult to

identify the properties and on the one hand, the injunction has been granted in favour of the Plaintiff and on the other hand, the Trial Court has declined police aid as it would create a difficult situation since both the litigating sides would be at loggerheads.

8 In the above backdrop and without laying down any precedent owing to the peculiar facts of this case, I find that it would be appropriate to permit the joint measurement of the properties of the litigating sides involving Survey Nos.297/C and 297/D and also the land of Jagdish Deshpande, to get a clear picture as to how much land the Plaintiff sold to Jagdish Deshpande from Survey No.297/D.

9 The learned Advocates for the respective sides are agreeable. They also agree to pay equal shares of the charges for such measurement. They also agree to maintain status-quo as existing today with reference to their individual properties and they would not create third party interest or encumbrances on the suit properties.

10 As such, this Writ Petition is disposed of with the following directions :-

- (a) The Trial Court shall issue appropriate directions to the Taluka Inspector of Land Records (TILR), Sailu for carrying out measurement of the lands of both the litigating sides bearing Survey Nos.297/C and 297/D, as well as the land of Jagdish Raghuvir Deshpande. The TILR shall be granted

liberty by the Trial Court to measure such lands as per the procedure and by placing reliance upon the revenue records available and cause the measurement of the adjoining lands also in the event the TILR finds that there is some confusion about the area of lands and survey numbers of the suit properties in common Survey No.297.

- (c) The Trial Court would fix the particular date and time on which these parties would remain present on the site and the Taluka Inspector of Land Records would be granted liberty to serve the notice on Jagdish Deshpande and such other parties so as to expeditiously carryout the measurement of the suit lands and fix the boundaries as per the revenue records.
- (d) Both these litigating sides shall pay the charges for such measurement in equal proportion.
- (e) The Trial Court would decide RCS No.50/2016 as expeditiously as possible and preferably on or before 31.03.2020.
- (f) Until then, these litigating sides shall maintain status-quo as existing today and they shall not create third party interest or encumbrances on the suit properties.
- (g) Liberty is granted to the Trial Court to decide RCS No.64/2018 along with RCS No.50/2016.

(h) In view of the above directions, Miscellaneous Civil Appeal preferred by the Petitioner (Sayed Jalal) before the first Appellate Court, for challenging the rejection of his Exhibit 5 in his RCS No.64/2018 vide order dated 14.08.2018, would stand disposed of and the Appellate Court would pass a formal order disposing of the said appeal.

11 Rule is, accordingly, discharged.

kps

(RAVINDRA V. GHUGE, J.)