

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 445 OF 2018**

Namdeo Maruti Dukare (deceased) through
LRs. Shivaji Namdeo Dukare & ors. ...Petitioners

Versus

Sopan Rama Dukare (deceased) through
LRs. ...Respondents

Mr. S. S. Shah, for the Petitioners.

Mr. Prasad P. Kulkarni, for Respondent nos.1A to 1D and 1G,
2, 3 and 5A.

CORAM: N. J. JAMADAR, J.

DATED : 25th SEPTEMBER, 2019

PC:-

1. Heard Mr. Shah, the learned Counsel for the petitioners.

2. This petition takes exception to an order dated 6th April, 2017, passed by the learned Jt. Civil Judge, Junior Division, Mohol, on an application (Exhibit 160) in Regular Civil Suit No.209 of 1989, for re-measurement of the lands, whereby the learned Civil Judge was persuaded to allow the application and appoint Taluka Inspector Land Records ("TILR"), Mohol, as Court Commissioner to carry out joint measurement of the lands bearing block nos.68 and 69 of village Nandgaon.

3. Mr. Shah would urge that the application for re-measurement came to be preferred during the course of recording of the evidence. In fact, the Cadestral Surveyor, who had already measured the lands in pursuance of the directions of the Court, was cross-examined. Thus, the learned Civil Judge committed an error in reopening the issue when the suit had reached an advanced stage, urged the learned Counsel for the petitioners. It was further submitted that the plaintiff – respondent had ample opportunity to peruse the record of the Court Commission and even this fact was noted by the learned Civil Judge and, yet, the impugned order was passed.

4. From the perusal of the material on record, it becomes evident that the plaintiffs have instituted the suit for recovery of possession of the allegedly encroached portion of suit land. The trial court found that the Court Commissioner/ Cadestral Surveyor had not executed the commission and measured the land in conformity with the prescribed procedure. Notices were not issued to the persons who had a stake in the measurement of the subject land and the adjoining land holders. The trial court was persuaded to

allow the application as it was of the view that a party can not be made suffer for the wrong committed by the surveyor.

5. Evidently, the suit has been instituted for recovery of the possession of the land with the allegations of encroachment. It is trite law that when the dispute is about boundaries based on allegations of encroachment, joint measurement of the lands in question is imperative for a just adjudication of the dispute. In the case at hand, undoubtedly, the application for re-measurement was preferred at an advanced stage of the suit. However, since the trial court has taken a view which would advance the cause of justice and facilitate the adjudication of the real dispute between the parties, I am not inclined to entertain the petition in exercise of extra-ordinary jurisdiction.

6. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]