

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

89 WRIT PETITION NO.58 OF 2020

Savita Rajendra Gole

Age : 45 years, occ : household

R/o Bhingardive Mala, Bhutkarwadi

Savedi Road, Ahmednagar.

Petitioner

Versus

Lanka Raghunath Kotkar

Age : 54 years, occ : service

R/o Dharmadhikari Mala,

Bhutkarwadi, Savedi,

Ahmednagar

Respondent

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Mr. V.P. Latange, Advocate for the petitioner.

Mr. R.S. Kasar, Advocate for the respondent.

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CORAM : **Rohit B. Deo, J.**

DATE : 13th January 2020.

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner is the plaintiff in Regular Civil Suit No. 270/2018 brought for declaration and perpetual injunction. The suit property is 10 ft. wide and 60 ft. in length common road from the east side of the plot of plaintiff

and according to the plaint averments, approaches the public road towards southern side of the suit property.

3. The plaintiff preferred an application (Exh.24) and sought permission of the trial Court to produce on record the village map and measurement map drawn by the private surveyor. By an order dated 14.01.2019, the trial Court rejected the application (Exh.24). In para-3 of the order dated 14.01.2019 the trial Court observes that the map is prepared by a private surveyor and there is no pleading in respect of the measurement done by the private surveyor. It is further observed that the other document is the photo copy of the map which is maintained in the office of T.I.L.R. With these observations, the trial Court rejected the application.

4. It is difficult to appreciate the reasons recorded by the trial Court. It is trite law that the evidence need not be pleaded. At any date and in any event, the trial Court could not have declined the permission to produce on record the documents. The fact that the map is prepared by a private surveyor would not ipso facto render the map inadmissible in evidence. Ultimately it would be for the trial Court to assess the evidenciary value of such map, if the map is proved in accordance with the provisions of Indian Evidence Act, at an

appropriate stage.

5. During the course of examination of PW-1- the private surveyor, the plaintiff sought to invite the attention of private surveyor to the map prepared by him. The learned trial Court refused to permit the attention of the witness to be drawn to the map on the ground that the application seeking production of the map (Exh. 24) is already rejected.

6. I find the order dated 14.01.2019 rejecting the application for production of documents (Exh.24) and the order dated 23.10.2019 refusing permission to invite the attention of witness to the map, manifestly unsustainable. The orders impugned are therefore set aside.

7. The application (Exh.24) is allowed.

8. However, it is made clear that the admissibility, relevance and evidentiary value of the documents produced on record are kept open and shall be considered by the trial Court at the appropriate stage.

9. With these observations, the Rule is made absolute.

(ROHIT B. DEO, J.)