

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14667 OF 2018**

Vandana Vaman Mali	...Petitioner
Versus	
Dilip Dharma Mhatre	...Respondent

Mr. Murlidhar L. Patil for the Petitioner

Mr. Sagar G. Talekar for the Respondent

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 3rd JANUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 11th September 2018 passed by the learned Civil Judge, Junior Division, Roha, in Regular Civil Suit No. 97/2010, by which, the learned Judge passed an order below Exhibit 1 and ordered re-measurement of the suit property.

3 Learned counsel for the petitioner submits that after the recording of evidence was completed and arguments were over and the matter was adjourned for judgment, the learned Judge, on his own accord, passed the impugned order below Exhibit 1 and ordered re-measurement of

the suit property. He submits that the learned Judge had no power to suo motu pass the impugned order, without an application being made by either of the parties, either written or oral.

4 Learned counsel for the respondent is unable to justify the impugned order or point out any provision of law, pursuant to which, the learned Civil Judge, Junior Division, Roha, passed the impugned order.

5 Perused the papers. The petitioner is the original plaintiff who has filed Regular Civil Suit No. 97/2010 in the Court of the learned Civil Judge, Junior Division, Roha for removal of encroachment and possession of the encroached area of land. It is the case of the petitioner in the Suit that the respondent had encroached upon the petitioner's land admeasuring 31 sq. meters and 16 sq. meters, and have raised construction on the said land. The respondent resisted the said Suit and filed his written statement, stating therein that he has not encroached on the petitioner's land. It appears that the petitioner led oral evidence of herself and her two witnesses and the respondent examined himself. It appears that the recording of evidence was over on 22nd March 2017 and the Suit was posted for argument on 33 dates between the period 7th June 2017 to 2nd August 2018. On 2nd August 2018, the Suit was adjourned for judgment to 16th

August 2018. Admittedly, neither the petitioner nor the respondent filed any application or made any oral request to the learned Judge for re-measurement of the suit property. However, the learned Judge, without any such application, either written or oral, passed impugned order below Exhibit 1 and ordered re-measurement of the suit property.

6 In this factual scenario, the learned Judge could not have passed the impugned order and ought to have proceeded with the judgment on the basis of the evidence that was led by the parties. No provision of law has been brought to the notice of this Court empowering the learned Judge to pass the impugned order.

7 Considering the aforesaid, the petition is allowed and the impugned order dated 11th September 2018 passed by the learned Civil Judge, Junior Division, Roha in Civil Misc. Appeal No. 97/2010 is quashed and set-aside. The learned trial Judge to proceed with the passing of the judgment. Petition is disposed of accordingly.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.