

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

WRIT PETITION NO. 4979 OF 2020

Bhanudas Shripati Chaudhari and others ... Petitioners

Versus

Arjun Janu Chaudhari and another ... Respondents

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Mr. G. R. Syed, Advocate for the petitioner

Mr. S. N. Gaikwad, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 11th MARCH, 2021

PRONOUNCED ON : 17th MARCH, 2021

PER COURT :-

. This writ petition is directed against the order dated 29.02.2020 passed by the Civil Judge, Junior Division, Ashti, District Beed, below application Exh-111 in Regular Civil Suit (RCS) No. 373 of 2011. By the impugned order, the application moved by the plaintiffs for appointment of Court Commissioner for local inspection, came to be turned down. The plaintiffs are therefore before this Court in this writ petition.

2. The petitioners filed the suit (RCS No. 373 of 2011) for relief of perpetual injunction against the respondents-defendants,

restraining them from obstructing their possession over the suit lands. It is the case of the petitioners that respondent No.2 sold 3 *gunthas* of land from gut No.252 to respondent No.1 under a sale-deed dated 16.04.2011. The description of the land purchased by respondent No.1 shows on to his West to be the suit land Survey No.416/12 of the petitioners. Respondent No.1 came to the suit land and attempted to measure it, claiming to be his own. The suit, therefore, came to be filed.

3. The petitioners moved application (Exh.111) for appointment of the Deputy Superintendent of Land Records, Ashti, as Court Commissioner to measure the lands Survey No.416 and 252 with a view to demarcate their boundaries.

The respondents filed reply to the said application and in no uncertain terms, gave consent for appointment of Court Commissioner for measurement of the lands.

4. The learned Judge, however, rejected the application on the ground that recording of evidence in the suit has already been concluded. Court Commissioner cannot be appointed for collection of evidence and finding as to who is in possession of the land. According to the learned Judge, it is not a case of boundary dispute.

5. Shri G. R. Syed, learned Advocate for the petitioners would submit that although it is a suit for injunction simpliciter, the dispute pertains to the location of land/lands and boundaries thereof. The respondents, in fact, gave consent in no equivocal terms for appointment of Court Commissioner. The learned Judge ought not to have rejected the application.

6. Shri S. N. Gaikwad, learned Advocate for the respondents, would on the other hand, submit that it is not a boundary dispute. Respondent No.1 has purchased 3 *gunthas* of land for valuable consideration. Village Talathi has drawn the map of Survey No.252/E. The boundaries given in the sale-deed matched with the boundaries drawn by the Talathi. Mutation entry has also been effected pursuant to the sale-deed dated 16.04.2011. The learned Advocate placed on record the relevant documents. He also relied on a judgment of this Court in the case of ***Dhondiram Nivrutti Pawar (since deceased) through L.Rs. Dhanaji Dhondiram Pawar and others vs. Laxman Khashaba Pawar and others – 2018(2) Mh.L.J. 255.*** Learned Advocate ultimately urged for rejection of the petition.

7. The suit is for injunction simpliciter. The dispute is, however, as to location of the lands belonging to the plaintiffs and the respondents. As such, it takes a colour of a boundary dispute. The suit lands are the ancestral lands of the plaintiffs. Whereas, respondent No.1 has purchased 3 *gunthas* of land from gut No.252 from respondent No.2. A copy of sale-deed is on record. The description of the land purchased by respondent No.1 given in the sale-deed shows that to the West side of the said land there is land belonging to the petitioner No.1 - Bhanudas, while to the East, there is a road. As such, the suit land Survey No.416/17 and the land purchased by respondent No.1 are shown to be adjacent to each other. According to the petitioners, a road, Kada-Dhamangaon-Pathardi goes through the land Survey No.252 and 416. As such, the land purchased by respondent No.1 shall not fall adjacent to the land belonging to the petitioners. A village map is on the record of the suit (Exhibit-101), whereas a map (Exh.93) relied on by the respondents has also been on record. The said map was drawn way back in November 1999 in connection with some other matter. Both the maps do not match with each other. It has, thus become necessary to appoint a Court Commissioner for the reasons given in the application Exh.111. The respondents vide their reply to the said

application in no uncertain terms, gave their consent for appointment of Court Commissioner. The respondents, therefore, cannot be allowed to turn around or blow hot and cold. The learned Judge, therefore, ought not to have rejected the application for the reasons on which none of the parties relied on.

8. In the result, the petition succeeds. The same is, therefore, allowed in terms of prayer clause “B”.

9. The Court Commissioner shall do his job in the light of averments made in the application Exh.111 and reply filed by the respondents thereof vide Exh.112.

[R. G. AVACHAT, J.]

SMS