

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

WRIT PETITION NO.6048 OF 2021

Maheboob s/o Rasul Shaikh
and others

Petitioners

Versus

Khudboddin s/o Nabi Shaikh
and others

Respondents

Mr.M.P.Kale, advocate for the petitioners
None present for Respondents.

CORAM : AVINASH G. GHAROTE, J.

DATE : 23rd July, 2021.

PC :

1 Heard Mr.Kale, learned Counsel for the petitioners.
None appears for the Respondents, through served.

2 Mr.Kale, learned Counsel for the petitioners, takes an exception to the order dated 26.02.2019, by which the application for measurement of the land in dispute and fixation of the boundaries has been allowed. The contention is that by way of an interim order, the final relief, as prayed in the plaint, cannot be granted. It is further submitted that the dispute is in respect of ownership and possession of the suit property, which the

defendants claimed to have acquired through their father, which is in their possession. The plaintiff, on the other hand, claims to have acquired title to the property on account of intestate succession.

3 The dispute is as to the holding and boundaries of parcels of land which comprise S.No.4/A, totally admeasuring 6.51 hectares, out of which, plaintiff claims to own 1.41 hectares, part of which, to the extent of more than 25 *gunthas* is claimed have been encroached by the defendants no.1 to 7 in the private measurement conducted. The respondents no.8 & 11 have also embarked upon acts of breaking the common boundaries of their land and that of the plaintiff, which has led to filing of the suit, seeking the relief of a decree directing the Deputy Registrar of Land Records for measuring the land and fixing the boundaries of the holding of the plaintiff and an injunctive relief consequent thereto.

4 The learned trial Court, by the impugned order, has merely appointed a Court Commissioner to measure the land of S.No.4/A admeasuring 1 hectare 41 Ares and to submit the map in the Court. Merely directing measurement of the land by the TILR does not mean, that the relief, as prayed in the plaint, is being

granted. The measurement of the land, in view of the contrary claims made by the parties to the land in question, is a step in aid to decide the matter in issue finally between the parties.

5 It is material to state here that even if the measurement map & report comes on record, the same will have to be proved as per law, at which point, it would be open for the defendants to lodge objections and cross examine the concerned witness, who is being examined to prove the map & the report..

6 That being the position, no fault can be found with the impugned order, which merely attempts to demarcate the boundaries of the suit property. Therefore, there is no merit in the petition.

7 Writ Petition is accordingly dismissed. No order as to costs.

8 The learned Counsel for the petitioner, seeks a stay of the impugned order for a period of four weeks, in view of the interim order already granted on 08.04.2021. Considering the request made, the interim order dated 08.,04.2021, is continued

for a period of four weeks from today, on the expiry of which, it will automatically get vacated.

(AVINASH G. GHAROTE)
JUDGE

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