

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

913 WRIT PETITION NO.8615 OF 2018

Abdul Manna Wahed Shaikh
Age: 46 years, Occu.: Business,
R/o.Latur, Tq. & Dist.Latur. ..Petitioner
(Orig. Appellant/Deft.No.1)

VERSUS

1. M/s.Bhikamchand Jain and Company
A registered Partnership Firm,
Head Office at Jalgaon,
Branch Office at Latur,
Through its Managing Director,
Shri Sureshkumar S/o Bhikamchand Jain
Age: 74 years, Occu.: Business,
R/o.Jalgaon, Tq. & Dist.Jalgaon.
2. The Municipal Corporation Latur.
Through its Commissioner,
Municipal Corporation, Latur,
Tq. & Dist.Latur. ..Respondents
(Resp. No.1 Orig.Respnt./Plaintiff
Resp.No.2/Respt.No.2/Deft.No.2)

...
Advocate for Petitioner : Shri Mahesh P. Kale
Advocate for Respondent No.1 : Shri V.D. Gunale
Advocate for Respondent No.2 : Shri R.P. Adgaonkar (absent)
...

CORAM : M.G.SEWLIKAR, J.

DATE: 11th August, 2021

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith.

2. Heard finally at the stage of admission with the consent of the parties.

3. Facts leading to this petition are that respondent No.1 herein filed R.C.S.No.385 of 2008 in the Court of Civil Judge (Junior Division), Latur for declaration of ownership over land Survey Nos.205-D and 205-F bearing Municipal No.96/1. This suit came to be decreed by the Judgment and decree of learned 5th Joint Civil Judge (Junior Division), Latur dated 1st July, 2014. Petitioner preferred R.C.A.No.129 of 2014 in the District Court, Latur.

4. Petitioner filed application at Exhibit-23 in the record of the trial Court for the appointment of Court Commissioner i.e. D.I.L.R. or T.I.L.R. Latur for joint measurement of Survey Nos.205-F and 205-E and to show the location of the suit property.

5. Respondent No.1 resisted this application by filing Say at Exhibit-27.

6. After hearing both the parties, learned Ad-hoc District Judge-1, Latur dismissed this application holding that plaintiff - respondent No.1 has filed suit for declaration of ownership and

recovery of possession. He has further held that plaintiff has not alleged that petitioner – defendant No.1 made any encroachment over land bearing Survey No.205-F, but the possession of the petitioner – defendant No.1 is unlawful. Learned Ad-hoc District Judge-1, Latur also held that this application is filed just to protract the final hearing of the appeal. With these observations, the learned Ad-hoc District Judge-1, Latur dismissed this application.

7. Heard Shri M.P.Kale, learned counsel for the petitioner and Shri V.D.Gunale, learned counsel for respondent No.1. None present for respondent No.2.

8. Shri Kale, learned counsel for the petitioner submitted that in the trial Court itself, he has disputed the identification of the property. He submits that his stall is located in survey No.205-E, which is the subject matter of the suit.

9. When Shri Kale, learned counsel for the petitioner was asked to point out whether such averment was made in the written statement, he could not point out any such averment denying the identification of the suit property. He has denied vaguely that suit property is not correctly described. In this view

of the matter, there is no propriety in the appointment of the Court Commissioner. Learned Ad-hoc District Judge-1, Latur has rightly dismissed the Application Exhibit-23 and has rightly observed that this application has been filed to delay the hearing of the appeal. In view of this, writ petition is dismissed. No costs. Rule is discharged.

10. Observations made in this Judgment are made for the disposal of this petition only. The learned First Appellate Court shall not get influenced by these observations and can come to its independent conclusion.

(M.G.SEWLIKAR)
JUDGE

SPT