

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

944. WRIT PETITION NO. 3916 OF 2021

1. Satyanarayan S/o Laxmandasji Vaishnav,
age 50 years occupation service
(Asstt. Police Sub-Inspector)
2. Shamsundar S/o Laxmandasji Vaishnav,
age 56 years occupation service
3. Ashok S/o Laxmandasji Vaishnav,
age 48 years occupation service
4. Kedarnath S/o Laxmandasji Vaishnav,
age 45 years occupation service
5. Kacharibai Laxmandasji Vaishnav,
age 80 years occupation household

All R/o near Dhantrupt Hanuman Mandir,
Ramnagar, Jalna Tal. & Dist. Jalna

...Petitioners

VERSUS

Shri Sansthan Dhantrupt Hanuman Mandir,
Ramnagar, Jalna
Through its Trustee Smt. Rukhmanbai Punamdas Bairagi
(Mahant), age 72 years
R/o Shri Sansthan Dhantrupt Hanuman Mandir,
Ramnagar, Jalna Tal. & Dist. Jalna.
Through the General Power of Attorney Holder:
Bharat S/o Hanumandas Vaishnav,
age 32 years occup. business
R/o Nath Baba Galli, old Mondha, Jalna Tal. & Dist. Jalna.

...Respondent

Mr. S.B. Bhapkar, Advocate for petitioner

CORAM : N.J. JAMADAR, J.

DATE : 2nd March, 2021

ORAL ORDER

1. Heard the learned Counsel for the petitioners.
2. Challenge in this petition is to the order dated 11/10/2019 passed by the learned III Joint Civil Judge (J.D.), Jalna, on an application for appointment of the Court Commissioner for measurement of the suit property (Gat No. 5377).
3. The learned Counsel for the petitioners endeavored to draw home the point that under the guise of appointment of Court Commissioner, the plaintiff intends to expand the scope of the suit and reopen the issues, which have been concluded in R.D. No. 30/1968, which was filed for execution of the decree in Reg. Civil Suit No. 53/1958.
4. The Trial Court was of the view that the appointment of the Court Commissioner for joint measurement of the suit property would assist the Court in arriving at a just decision of the case. It was further observed that no prejudice would be caused to any party in as much as a party aggrieved by the report of the Court

Commissioner could assail its correctness. Holding thus, the Deputy Superintendent of Land Records, Jalna, was appointed as the Court Commissioner for measurement of Gat No.5377 of Mauje Jalna Tal. & Dist. Jalna.

5. From perusal of the plaint, it is evident that there are allegations that the defendants have committed encroachment over the portion of the suit premises bearing Gat No. 5377 and constructed four rooms unauthorisedly. There is a specific prayer for removal of the encroachment and the rooms, which have been constructed on the allegedly encroached portion of the suit premises.

6. It is trite that where the allegations are of encroachment and prayer is made for removal of the encroachment, measurement by the Cadestral Surveyor assists the Court in arriving at a just decision of the case.

7. A useful reference, in this context, can be made to the observations of the Hon'ble Supreme Court in the case of **Haryana Wakf Board Vs. Shanti Sarup and others [(2008) 8 Supreme Court Cases 671]**;

" 3. *The dispute that was raised by the parties*

before the court was whether the respondent had encroached upon any land belonging to the appellant-Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land.

4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 of the CPC. "

8. In the circumstances, it does not appear that the Trial Court exercised the discretion in an unjustifiable manner. In any event, no interference is warranted in exercise of the extra ordinary jurisdiction. Hence, the petition stands dismissed.

(N.J. JAMADAR)
JUDGE