

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

WRIT PETITION NO.11280 OF 2021

DATTATRAY MOHAN GIRI THROUGH HIS POWER OF ATTORNEY
LAXMIBAI DATTATRAY GIRI
VERSUS
SHANKAR PANDITRAO PATIL AND OTHERS

...
Advocate for Petitioner : Mr. N.J. Patil

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CORAM : MANGESH S. PATIL, J.

DATE : 12.10.2021

PER COURT :

Heard the learned advocate Mr. N.J. Patil for the petitioner.

2. The petitioner is the original plaintiff who is claiming perpetual injunction restraining the respondents defendants from obstructing his possession over the suit property.

3. By moving Application (Exhibit-88) at his request the trial court appointed TILR AUSA as a Court Commissioner for carrying out measurement and for fixing the boundaries. Accordingly the TILR carried out the measurements and submitted a report *inter alia* showing that it is the petitioner who is in possession of a portion of respondent's land. Since by the order the Court Commissioner TILR was directed to merely fix the boundaries but he having shown the encroachment, the petitioner made another application requesting the court to direct a remeasurement by the TILR. That Application was rejected. He thereafter file another Application

(Exhibit-119) once again making a request to fix the boundaries by appointing TILR as a Court Commissioner as per the earlier order passed on the original Application (Exhibit-88). By the impugned order the learned Judge has rejected the Application.

4. The learned advocate for the petitioner submits that the TILR was expected to fix the boundaries as per the directions in the order passed on his Application (Exhibit-88). Ignoring such directions, the TILR carried out the measurement and without fixing the boundaries demonstrated as to how the petitioner is in possession of excess land. Since the directions of the court in the judicial order were not obeyed an innocuous request was made to direct him to remeasure the land and still the trial court rejected that Application. Faced with the situation the petitioner had no alternative but to make a fresh application seeking a self same direction for carrying out measurement and fixing the boundaries. The trial court ought not to have rejected the Application. It failed to appreciate all the aforementioned facts and circumstances. The order being impugned be quashed and set aside.

5. I have carefully gone through the papers and considered the submissions of the learned advocate. In fact, it is a suit for perpetual injunction simplicitor whereby the petitioner is claiming to restrain the respondents from obstructing his possession. In view of such nature of the suit, in fact there was no occasion for appointment of a Commissioner and it is for the petitioner, independently, to demonstrate and substantiate his exclusive possession. Still, he was able to obtain a direction for appointment

of a Court Commissioner for carrying out measurement and fixing the boundaries as per the order passed on his Application (Exhibit-88). Though the TILR failed to fix the boundaries as per the direction, he noticed that the petitioner is in possession of some excess land and demarcated it in his report. Instead of seeking a remedy to get the land measured by resorting to a superior measurement he once again made a request to the trial court to direct the TILR to carryout remeasurement and fix the boundaries as per the earlier order. His application was rejected and the order reached finality. After such rejection of earlier Application (Exhibit-103) by the order dated 08.02.2018, he has made another attempt by filing a present Application (Exhibit-119) on 29.04.2019.

6. It is thus apparent that instead of seeking a superior measurement the petitioner has been insisting for appointment of Court Commissioner for carrying out the self same measurement which has already taken place. Since the result of the measurement *prima facie* goes against him one can appreciate his anxiety. However, when at his request the lands have already been measured and he has not made any attempt to challenge that measurement by seeking superior measurement or measurement by superior authority as is permissible in law, I find no error or illegality in the impugned order refusing to concede to his request.

7. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)