

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2735 OF 2021

Pushpa Anandrao Parte & Ors. Petitioners

Vs.

Vijay Sadashiv Shinde & Ors. Respondents

Mr. Nikhil Wadikar i/by Nandu V. Pawar for Petitioners.

Mr. Shriram S. Kulkarni i/by Devidas J. Jadhav for Respondent Nos. 1 and 2.

Coram : NITIN W. SAMBRE, J.

Date : 11TH AUGUST, 2021

P.C.:

1. In a Suit for declaration of ownership filed by the Respondent, the trial Court rejected the prayer for grant of temporary injunction, however, the appellate Court granted the same. As such, this petition.

2. In response to the Court's query, I am informed by Mr. Kulkarni, learned counsel for Respondent Nos. 1 and 2/ Plaintiff that his

application for carrying out measurement of land being Survey/Gat No. 760 at village Bamnoli, Taluka Jawali, District Satara is pending consideration. I am further informed that the land owned by the Petitioner/ Defendant being Survey No. 138 is located in adjacent village namely Indawali, Taluka Jawali, District Satara.

3. Both the parties are willing to bear their respective expenses of measurement and as such has come out with a joint request for appointment of T.I.L.R. / D.I.L.R. as Court Commissioner under Order 26 of Code of Civil Procedure.

4. Considering the nature of the dispute, temporary injunction granted by the Court below, the prayer moved by both the parties appears to be just and proper. As such, the Petition is disposed of with following order :

ORDER

(i) The Taluka Inspector of Land Records / District Inspector of Land Records shall treat application of the Respondent/Plaintiff moved

on 25th January, 2019 as a joint request for measurement of land of the Petitioner and land of the Respondent respectively referred above.

(ii) From the date of production of this order, said authority shall communicate the parties hereto respective cost of measurement to be borne by each of them within 15 days. Within 15 days thereafter, the parties agree that they shall deposit costs after adjusting already deposited amount by the Plaintiff, which other lands to be measured, shall be in the discretion of the Authority.

(iii) Let exercise of measurement be carried out within two months from the date of deposit of said amount.

(iv) Once said measurement is carried out, the report thereof be submitted before the Court below, in which the Suit is pending and parties hereto will be at liberty to lodge their objection to such measurement report.

(v) Subsequent thereto considering the change in circumstance i.e. placing of measurement report on the record of the Civil Court, the Petitioner shall be at liberty to seek vacation of injunction, which is ordered by the District Judge.

(vi) The learned Civil Judge shall deal with prayer for vacation of injunction including that of the issue of restoration of electricity connection without being influenced by the order of the District Judge or disposal of this petition.

(vii) Either of the parties if fail to comply with the aforesaid order i.e. deposit of costs of measurement and non co-operation on the issue of carrying out measurement by the land surveyor, such default shall prevail while dealing with the prayer made for grant of / vacation of injunction.

5. The Writ Petition stands disposed of.

(NITIN W. SAMBRE, J.)