

BDP-SPS

Bharat
D.
Pandit

Digitally signed
by Bharat D.
Pandit
Date: 2021.03.04
10:37:13 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9523 OF 2017**

Mr. Sharad Vitthal Jadhav & Anr Petitioners.

V/s

Mr. Abajirao Appaji Jadhav Respondent.

Mr. Vaibhav Gaikwad for the Petitioner.

Mr. Kirankumar Phakade for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 2, 2021

P.C.:-

1] Application-Exhibit-109 came to be moved by the
Petitioners/Plaintiffs, thereby seeking permission to lead additional
evidence which is rejected by the impugned order dated 1/8/2017. As
such this Petition.

2] Heard respective Counsels.

3] After setting aside the judgment delivered in RCS No.191 of
1996, the lower appellate court gave following directions:-

- “1) Appeal allowed.
- 2) The impugned judgment and order dated 3.9.10 passed in Regular Civil Suit No.191/1996 is set aside.
- 3) The proceeding is remanded back to trial Court with direction that the trial Court shall appoint Taluka Inspector of Land Records or District Inspector of Land Records as Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1976, at the costs of the plaintiff.
- 4] The Court Commissioner, so appointed shall take measurement of the land claimed by the parties in presence of the parties. The Court Commissioner shall prepare map showing therein boundaries of the disputed suit lands along with measurements in the map.
- 5) The Court Commissioner shall prepare report and file it in the record of the case and thereafter trial judge would give an opportunity to the parties to lead evidence, upon considering the evidence as well as the report of the Court Commissioner, shall decide the suit afresh in accordance with law as expeditiously as possible, preferably within six months of the receipt of this order.
- 6) Parties to bear their own costs.”

4] In the backdrop of aforesaid directions given by the lower

appellate court, Trial Court was of the opinion that the Petitioners cannot be granted liberty to lead evidence.

5] It appears that the Petitioners have already examined Cadastral Surveyor by way of additional examination-in-chief. He intends to endorse the report given by the Cadastral Surveyor which is in his favour. The lower appellate court, while giving directions referred supra, was never of the opinion that the parties to the suit cannot be permitted to lead additional evidence. Once the matter was remanded by the lower appellate court that too with intention to bring on record additional evidence, Trial Court ought not to have restricted parties from leading additional evidence in addition to evidence of Cadastral Surveyor i.e. Court Commissioner.

6] In that view of the matter, impugned order passed below Exhibit-109 is hereby quashed and set aside. The said application-Exhibit-109 stands allowed.

7] Petition is allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)