

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7912/2019
Chaganlal @ Ghanshyamdas Shrikisandas Rathi
...Versus...
Nitinkumar Pundalik Mankar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Rahul Tajne, Advocate petitioner
Shri U.J.Deshpande Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/09/2021

Heard Mr. Tajne, learned counsel for the petitioner, who challenges the order dated 04.11.2019 passed by the trial Court, whereby the application for re-measurement of the suit property has been rejected. Mr.Tajne, learned counsel for the petitioner submits that since the surveyor who had carried out the original measurement, based upon whose report the suit was filed, had passed away, the Court was requested to permit a fresh measurement, which was so permitted. The fresh measurement was not agreeable to the plaintiff, therefore, objections were filed. An application to cross-examine came to be rejected on 05.08.2019, as a result of which the Surveyor was examined by the plaintiff as his witness, who in turn was cross-examined by the defendant.

After this unheard of procedure was over, the plaintiff again moved an application for re-measurement of the land on the ground that the earlier measurement, was incorrect, which has been rejected by the Court. Mr. Tajne, learned counsel for the petitioner submits that there was a need for re-measurement, as the report of fresh measurement did not indicate the encroachment. He further submits, that in order to decide the suit in its correct perspective, the re-measurement is necessary.

Mr. Deshpande, learned counsel for respondent submits that the demand for fresh measurement, is to collect evidence and nothing else. Earlier also objections were raised to the measurement done by the Surveyor, with an intention to remeasure the suit property vide Exh.37, which came to be rejected on 18.06.2019 and now the same cannot be again permitted.

It is not disputed that considering the fact that the Surveyor who had made the measurement on the basis of which the suit was filed, was no more, in view of which the learned trial Court had ordered re-measurement. Merely because the report did not satisfy the plaintiff, that cannot be a ground in law to order re-measurement, as such an attempt could be only to collect additional evidence and nothing else, which is impermissible in law. The petitioner had an

opportunity to raise objection to the measurement report which has been so done and the petitioner has further adopted a course of examining the Surveyor and has taken his chance, which being the position, the matter now cannot be permitted to be re-opened by directing fresh measurement, in view of which I do not see any infirmity in the impugned order. The same is therefore without merit and the petition is dismissed.

JUDGE

rvjalit