

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

947 WRIT PETITION NO.730 OF 2019

JAIPRAKASH BANDU JADHAV AND ANOTHER
VERSUS
MEENABAI NANA JADHAV

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Advocate for Petitioners : Mr. Nitin K. Chaudhari
Advocate for Respondent : Mr. Pramod F. Patni

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CORAM : SMT. BHARATI H. DANGRE, J.
DATED : 09/02/2022

PER COURT :

1. Heard the learned counsel for petitioners and the learned counsel for respondent. The petitioners are defendants in R.C.S. No. 753/2017 instituted before the Civil Judge, Junior Division, Aurangabad. The suit was filed for perpetual injunction and mandatory relief against the defendants.

The claim stated in the petition is to the effect that the plaintiffs are in peaceful possession over the land Gat No. 200 and the description of the property is given in para No. 1 of the plaint. The plaintiff also pleaded that initially river was passing from the Bandh of land Gat Nos. 190 and 200 and owners of land Gat No. 190 i.e. defendants by making encroachment over the river/Nala completely blocked it and the river/Nala came to be diverted from the land Gat

No. 200 which belongs to plaintiff. With the pleadings that the lands of the plaintiff and that of the defendants are divided by old Bandh which is in existence today, apprehending that the defendants are demolishing the said Bandh and making encroachment upon the land of plaintiff from the northern side since the land Gat No. 190 is located in the land of the plaintiff, injunction is sought for.

2. The defendants filed a written statement and denied the contention of the plaintiff that the defendants are occupying the land Gat No. 190 which is towards the south of the land of the plaintiff and it has specifically pleaded by them that in between Gat No. 190 owned by the defendants and land bearing Gat No. 200, there is river. Allegation of the plaintiff that defendants are trying to take advantage of the change in diversification of the river due to the encroachment made by the defendants was specifically denied. In additional written statement, the specific pleadings are set out by the defendants and it is pleaded as a factual position that in between land Gat No. 190 and 200 there was no common Bandh at any point of time and on the contrary in between lands Gat No. 190 and Gat No. 200 there is river having width of 40/50 feet and allegation is levelled against the plaintiff to the effect that they want to grab whole portion of river and hence, the suit is sought to be dismissed.

3. In this Regular Civil Suit, the plaintiff moved an application under Order 26, Rule 9 of Code of Civil Procedure for appointment of Court Commissioner for measurement of the land of plaintiff and defendants for determining the boundaries of Gat No. 200 and Gat No. 190. This application was strongly opposed by the defendants, but the learned Judge arrived at a conclusion that there are documents available on record filed by the defendants which show that plaintiff got his land measured, but these documents are suppressed. The learned Judge expressed opinion that in order to get the clear opinion in respect of alleged encroachment, it is necessary to measure the land of the plaintiff Gat No. 200 along with the land of defendants Gat No. 190 which was never done earlier. In the wake of aforesaid factual situation and to ascertain the boundary of the suit property and obstruction thereupon since the measurement of the suit property along with the land of the defendants is necessary for effective adjudication of the dispute between the parties, the application came to be granted.

Learned counsel Mr. Chaudhari appearing for the petitioner vehemently contested the said order since he states that earlier Survey No. 98 was trifurcated in to Gat Nos. 198, 200 and 201 and therefore, if at all the controversy is to be determined by the

appointment of the Court Commissioner, learned counsel Mr. Chaudhari submits that upon implementation of consolidation scheme in village Kachner Survey No. 98 came to be divided into three separate Gat numbers i.e. Gat Nos. 198, 200 and 201. Similarly, Gat No. 100 came to be retained as Gat No. 190 only which is the land owned and possessed by the defendants.

4. In the wake of aforesaid factual position, the submissions of Mr. Chaudhari is to the effect that if at all measurement is carried out by the Court Commissioner the other two Gat numbers i.e. Gat Nos. 198 and 201 shall also be required to be measured and demarcated separately. This will give clear position of location of Gat No. 190 and Gat No. 200 and the case of the plaintiff about the alleged encroachment whereas the claim of the defendants is to the effect that the survey No. 100 which is retained as Gat No. 190. In the wake of the above, the order passed by the learned Judge on 6.12.2018 is modified partly and Taluka Inspector of Land Records who is appointed as Court Commissioner for measurement of Gat No. 190 and Gat No. 200 shall also demarcate and segregate the lands Gat Nos. 198 and 201 by giving notice to the owners of the respective properties.

Since the proceeding of Regular Civil Suit is stayed by the

order of this Court dated 21.1.2019, the stay is vacated.

The learned Commissioner is directed to submit report to the Civil Judge, Junior Division, Aurangabad within a period of eight weeks from the date of receipt of the order and thereupon the learned Civil Judge, Junior Division, Aurangabad shall make every endeavour to terminate the proceeding of R.C.S. No. 753/2018 within one year from today.

[SMT. BHARATI H. DANGRE, J.]

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