

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

WRIT PETITION NO.2574 OF 2019

KASHIBAI DILIP MADANE
VERSUS
VIKAS MANIKRAO SUL AND ANOTHER

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Advocate for the Petitioner : Shri Panale Sachin S.
Advocate for the Respondents : Shri Kulkarni Ashutosh S.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 31st January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the respondents.
2. The controversy in the present Writ Petition can be resolved in a simple way and the writ petition can be disposed of in the following manner.
3. The present respondents, who are the plaintiffs in Special Civil Suit No.26/2009 filed before the Civil Judge, Senior Division, Latur, seeking specific performance of contract, mentioned the suit property by giving its description in paragraph 1 of the plaint. The present petitioner i.e. the defendant to the said suit, disputed the description of the suit property by specifically pleading that the plaintiffs are taking advantage of

the situation and have intentionally cited incorrect boundaries of the suit property, with a hope of gaining advantage since the boundaries shown in the plaint are adjacent to the main road.

4. In the wake of the above, the present petitioner filed the application vide exhibit 146 seeking issuance of the witness summons to the Deputy Superintendent of Land Records, Latur, so as to produce on record the original map and records of the land Survey Nos.244/2/4 and 244/2/5.

The application Exhibit 146, however, was rejected by the Trial Court vide order dated 18.11.2017, which prompted the petitioner to approach this Court in Writ Petition No.14597/2017, which came to be disposed of on 26.11.2018 when the learned counsel for the parties submitted that they are agreeable to request the Trial Court for appointment of the court commissioner for joint measurement of the suit properties and the plaintiffs will move an application for the said purpose. The Court recorded the said statement to the effect that the TILR would be appointed as the court commissioner and the litigating sides shall equally share the charges for appointment of the court commissioner.

Hence, the said writ petition was disposed of with liberty to the plaintiffs to move an application for appointment of the court commissioner within three weeks and by consent of the parties, the concerned TILR was directed to be appointed as the court commissioner

and the charges were to be borne by the litigating sides. The report of the court commissioner was directed to be submitted on or before 28.02.2019 and the Trial Court was directed to decide the said suit on or before 31.07.2019.

5. The plaintiffs, however, failed to take out an application as per the commitment given to this Court, which prompted defendant No.1 (petitioner herein) to seek the appointment of the TILR as the court commissioner by filing an application vide exhibit 164. The application was granted on 23.01.2019, but vide direction No.4, the petitioner was directed to deposit the costs of the court commissioner and this is what hurt the petitioner and she has approached this Court.

6. In the wake of the aforesaid order passed by this Court on 26.11.2018, by recording the consent of the parties for appointment of the court commissioner and also the express consensus for bearing charges of the court commissioner, the order passed on 23.01.2019 is clearly in the teeth of the arrangement arrived at between the parties, except clause 4 of the operative order.

7. In the result, the direction contained in clause 4 of the impugned order is modified to the effect that the costs of the court commissioner shall be borne by the litigating parties in terms of the undertaking expressed before this Court when it passed an order on 26.11.2018. With the aforesaid modification, the impugned order is

upheld.

8. It is to be noted that as early as on 26.11.2018, the proceedings in SCS No.26/2009 were directed to be concluded on or before 31.07.2019, still the suit is pending. In the wake of this fact, the Deputy Superintendent of Land Records, who is appointed as the court commissioner by order dated 23.01.2019 passed by the Civil Judge, Senior Division, shall submit his report within a period of three months from today. It is made clear that the parties shall be charged at normal rates and not for the express rate since the direction is issued for carrying out the measurement long back ago on 23.01.2019. Upon the report being submitted within three months from today, the learned Civil Judge, Senior Division, shall terminate the proceedings in SCS No.26/2009 within a period of three months thereafter. Needless to state that all the parties shall render their cooperation to the learned Judge for early disposal of the suit.

9. The Writ Petition is disposed of in the aforesaid terms.

kps

(SMT. BHARATI H. DANGRE, J.)