

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3353 OF 2022

GANESH BABAN GADILKAR AND OTHERS
VERSUS
SANTOSH DATTATRAY GADILKAR AND ANOTHER

...
Advocate for Petitioners : Mr. Prashant Nangare.

.....
[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2022

ORDER :

1. The suit is filed for permanent injunction wherein a prayer for appointment of Court Commissioner was also made in the plaint. The Court Commissioner was appointed by the Trial Court during the course of trial and he has submitted his report. He was examined during the course of trial. After recording of evidence was over and arguments were heard by the Trial Court, the Trial Court by the impugned order passed below Exhibit-1 appointed T.I.L.R., or any other competent officer of his office as a Court Commissioner to measure the suit property i.e. Gut No. 48 and directed him to show area of plaintiff and defendants and also to show boundaries if available

on the land of plaintiff and defendants and encroachment, if any, made by the defendants. The Petitioner is aggrieved by that order.

2. Perusal of impugned order reveals that the Trial Court has taken into consideration the admissions given by the Court Commissioner in his cross examination. It is also noted that there is no evidence to show that the Court Commissioner issued notices to the concerned parties. There were discrepancies and/or shortcomings in the report of the Court Commissioner. It is observed by the Trial Court that T.I.L.R. was not able to found fixed stone of marking and he has not shown area of brook, chari and Kharab area in the map. The Trial Court, therefore, was of the view that the map of T.I.L.R. appears to be faulty and therefore, the report of T.I.L.R. needs to be discarded and fresh commission needs to be appointed. The Trial Court therefore, by relying on *Ram Lal and Ors. Vs. Salig Ram and Ors. (Mh.L.J.) 2020 (1) 170*, passed the impugned order.

3. Rule 10(3) of Order XXVI provides that “where the Court is for no reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

4. In *Ram Lal and Ors. Vs. Salig Ram and Ors. (Mh.L.J.) 2020 (1) 170*, it is held that if the Court Commissioner report is suffering from non compliance of the applicable instructions of the Court regarding demarcation of the land either the Court can discard the report and issue fresh commission or the Court can dismissed the suit.

5. It appears from the admissions given by the Court Commissioner in his cross examination that he has not complied with the directions of the Trial Court while appointing him as Court Commissioner. Taking into consideration the fact that the T.I.L.R. could not find area of brook and Kharab area in the map, the Trial Court has rightly held that the map of T.I.L.R. was appears to be faulty. The Trial Court was therefore, justified in passing the impugned order by giving cogent reasons. With a view to decide controversy between the parties, the Trial Court was justified in appointing the Court Commissioner. In that view of the matter, there is no substance in the challenge raised in the present petition. The impugned order does not suffer from any jurisdictional error or illegality or perversity. The writ

petition being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE