

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3202 OF 2013**

CHANDRAKANT BALAJI DOIPHODE

..PETITIONER

VERSUS

HINGOLI MUNICIPAL COUNCIL AND ANOTHER ..RESPONDENTS

...

Mr. P. R. Katneshwarkar, Advocate for the
Petitioner.

Mr. S. S. Rathi, Advocate for Respondent No.2.

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CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The present petitioner is original plaintiff. He filed Suit for declaration of ownership and perpetual injunction restraining defendants from disturbing his possession over the property as detailed in the plaint. During the pendency of the Suit, the Court Commissioner was appointed on the application made by the plaintiff. He submitted his report. The evidence was led. The plaintiff was not satisfied with the report and the evidence. The plaintiff filed another application for appointment of TILR as Court Commissioner bearing Exhibit-211. The said application is rejected. The petitioner also filed another application for amendment Exhibit-214 for demarcation of the property and fixation of boundaries. The said application is also rejected. Against the order rejecting the applications Exhibit-211 and 214, the plaintiff has filed present petition.

2. Mr. Katneshwarkar, learned counsel for the petitioner submits that, the land bearing Survey No.71-A and 71-AA are the properties subject matter of dispute. The Court Commissioner was appointed to measure both the properties and to give the details of construction if any on the said properties. Pursuant to the order of the Court, the TILR measured the said property and submitted the report. In the cross-examination the TILR specifically admitted that, as there is no sub division between 71-A and 71-AA, the necessary boundaries could not be delienated and could not show the extent of construction. According to the learned counsel, the purpose of appointment of Court Commissioner is not served by such a report. The report of the Court Commissioner would resolve the entire dispute between the parties, as such it was necessary to appoint the Court Commissioner. The learned counsel further submits that, it is also necessary to demarcate and fix the boundaries, so that the dispute amongst the parties is settled once for all and the multiplicity of litigation can be avoided.

3. The learned counsel for the petitioner further submits that, order under Section 85 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'MLRC, 1966') is also passed, but the same is not yet implemented. The learned counsel relies on the judgment of the Apex Court in a case of **E. Achuthan Nair Vs. P. Narayanan Nair**

and Another reported in **AIR 1987 Supreme Court 2137** to suggest that, the Suit for demarcating boundaries of property is maintainable.

4. I have also heard Mr. Rathi, learned counsel for respondent no.2.

5. The Suit filed by the plaintiff is for declaration of ownership and perpetual injunction. The Suit is not for removal of encroachment or for possession of the property. The TILR was already appointed at the request of the petitioner/plaintiff. He has submitted the report upon measurement. The evidence is also led.

6. It needs to be considered that, order under Section 85 of the MLRC, 1966 for sub division is already passed by the revenue authorities, that too upon the application of the present petitioner. It is for the petitioner to get that order implemented through the Revenue Authorities. The sub division of the property would imply division of the property and both the properties would be segregated.

7. There cannot be any debate on the proposition that, Suit for demarcating boundaries may be maintainable. However, in the present case, the petitioner had filed Suit for injunction specifying the boundaries of which he is in possession and after the evidence of TILR is

recorded i.e. after the hearing is commenced has filed the application for amendment.

8. As according to the contention of the petitioner, the order under Section 85 of the MLRC, 1966 has already been passed, the petitioner has to get the same implemented in accordance with the provisions of the MLRC and the Rules therein. The petitioner now after the evidence is led is changing the nature of the relief claimed. By seeking perpetual injunction the petitioner contends that, he is owner and possessor of the specific area of the property detailed in the plaint alongwith the map annexed to the plaint. After the evidence is led, the said amendment is sought to be made. I do not find any error committed by the Court while passing the impugned order. It is for the petitioner to take appropriate steps in proceeding under Section 85 of the MLRC, 1966. After the proceeding under Section 85 of the MLRC, 1966 concludes, the petitioner may take effective steps as may be permissible under law.

9. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE