

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9350 OF 2014

SAMBHAJI DINKAR PACHPUTE AND OTHERS
VERSUS
ASHOK NAMDEO DANGAT AND OTHERS

...

Advocate for Petitioners : Mr. Dilip B. Rode
Advocate for Respondents No.1 to 3 : Mr. Suresh P. Salgar h/f.
Mr. Niteen V. Gaware

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CORAM : NITIN B. SURYAWANSHI, J.
DATE : 02-03-2022

PER COURT :-

The petitioners-original defendants are aggrieved by the order passed by the learned Civil Judge, Junior Division, Shrigonda, below Exhibit-46 in Regular Civil Suit No. 5 of 2008, thereby allowing the Application filed by the plaintiffs for appointment of Taluka Inspector of Land Records ("T.I.L.R.") for fixation of boundary marks.

2. The petitioners contend that, earlier the plaintiffs have filed application (Exhibit-5) for appointment of T.I.L.R. as Court Commissioner for measurement of the suit property and for fixing the boundary marks. The same was allowed by the learned trial Court vide order dated 11.03.2008 and the T.I.L.R. was directed to measure suit property described in plaint paragraph No.1 and to carry out the measurement by following procedure and rules as

per Survey Manual and to submit his detailed report with documents and map prepared by him.

. The plaintiffs, thereafter, again filed application (Exhibit-22) contending that, since the boundaries are not fixed by the T.I.L.R. he should be again appointed as Court Commissioner to fix the boundaries of the suit property. The said application was rejected by the trial Court. Being aggrieved, the plaintiffs approached this Court, by filing Writ Petition No. 9272 of 2013, wherein this Court observed as follows :

“6. The TILR is not yet examined. After the TILR is examined, the parties can move appropriate application including the application in the nature of Exh.22. It would be for the TILR to give the details about the measurement and whether he has fixed the boundaries or not.

7. In light of the above, Writ Petition is disposed of with the aforesaid observation and directions. No costs.”

In the trial, after examination of the T.I.L.R., application (Exhibit-46) is filed by the plaintiffs seeking direction to the T.I.L.R. to fix the boundaries on the basis of earlier measurement carried out by him, the same is allowed. The petitioners are aggrieved by this order.

3. The learned Advocate for the petitioners vehemently submitted that, the application was not maintainable and the impugned order is hit by the principle of *res-judicata*, when the

same application was filed and was allowed, there was no occasion for the learned trial Court to again allow the application with similar prayer.

4. Taking into consideration the fact that, earlier the T.I.L.R. has carried out the measurement of the suit property and has prepared the map. The plaintiffs were justified in filing subsequent application for fixing the boundaries by the T.I.L.R.

5. In the light of above observation made by this Court in paragraph No. 6 of the order quoted here-in-above, the plaintiffs were justified in filing the application, after evidence of T.I.L.R. was recorded. The learned trial Court has rightly allowed the application filed by the plaintiffs by taking into consideration the facts of the case and evidence on record.

6. In these circumstances, it is not possible to accept the arguments of the petitioners that, the impugned order is hit by the principle of *res-judicata*. There is no substance in the writ petition.

7. Writ petition is, therefore, dismissed. No costs.

8. *Interim* relief stands vacated.

(NITIN B. SURYAWANSHI)
JUDGE