

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.12657 OF 2022

CHANDRAKANT KAILASH PATIL AND ANOTHER

VERSUS

RAMLAL DAMU PATIL AND OTHERS

...

Advocate for Petitioners : Mr Sudhakar T. Mahajan

CORAM : SANDEEP V. MARNE, J.

DATE : 14th DECEMBER, 2022

PER COURT :

1. By this petition, petitioners challenge the order dated 16.09.2022 passed by the Civil Judge, Junior Division, Parola rejecting his application for reappointment of Court Commissioner for remeasurement of the suit property.

2. Earlier by order dated 27.02.2020, Taluka Inspector of Land Records was appointed as a Court Commissioner to visit the land situated at Block No. 98/2 and Block No. 98/3/A and to carry out direct measurement of those lands. Accordingly, Court Commissioner has measured the land and has certified that the plaintiff is in possession of lands admeasuring 1H13R and that the defendant is in possession of the land 2H97R.

3. It is the case of petitioners that as per the 7/12 extract, the total area of his land bearing Block No. 98/2 is 1H50R whereas in the joint

measurement, the plaintiff is found to be in possession of the area of only 1H13R. He would further submit that as per the 7/12 extract, the area of the land of the defendant is required to be 1H50R whereas the total land found to be in possession of the defendant by the Taluka Inspector of Land Records is 2H97R. Based on this, learned counsel for petitioners draws an inference that there has been encroachment by defendant in the land of the plaintiffs. However, since the exact location of encroachment has not been shown in the measurement, the application at Exh. 27 was filed for reappointment of the Court Commissioner for remeasurement of the land.

4. The trial in the suit is yet to commence and the plaintiff is yet to elucidate his case by production of his evidence. The Taluka Inspector of Land Records who has carried out the joint measurement is yet to be examined the witness in the trial. Therefore, in my view, the application for reappointment of Court Commissioner at this stage, clearly appears to be premature. The trial court has correctly rejected petitioners application by order dated 16.09.2022.

5. However, after the parties adduce their evidence and in the event trial court arrives at a conclusion that it is necessary to remeasure the land for the purpose of locating the exact extent of encroachment, the trial court shall be at liberty to do so notwithstanding rejection of petitioners' application vide order dated 16.09.2022. Even petitioners would be at liberty to apply for reappointment of Court Commissioner after adducing the evidence and if such an application is filed, the Court shall

decide the same strictly on its own merits without any influence either by the order dated 16.09.2022 or by present order.

6. With the above directions, the writ petition is dismissed.

[SANDEEP V. MARNE, J.]

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