

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6271 OF 2021

Changdeo Iswar Kamble and ors.

...Petitioners.

V/s.

Meenakshi Vivek Shinde and ors.

...Respondents.

Mr. Ashok M. Misal for the Petitioners.

Mr. Somnath Thengal i/b Mr. Manoj B. Bagal for the Respondent No.1.

CORAM : N.R. BORKAR, J.
DATE : 16.02.2022.

P.C. :

1. This petition takes an exception to the order dated 22.09.2020 passed by the learned 3rd Joint Civil Judge, Junior Division, Madha below Exhibit-31 in Regular Civil Suit No. 495 of 2018.

2. The respondent No.1 (original plaintiff) herein filed the aforesaid Suit *iner alia* for measurement of suit land and for fixation of boundaries. The petitioners (defendants) contested the Suit by filing written statement.

3. The respondent No.1, after filing of written statement but before framing of issues, filed an application for appointment of Court Commissioner for measurement and fixation of boundaries of suit land. The trial court by the order impugned allowed the said application and appointed Deputy Inspector of Land Records as Court Commissioner.

4. I have heard the learned counsel for the petitioners and learned counsel for respondent No.1/original plaintiff.

5. The learned counsel for the petitioners submits that the application for appointment of Court Commissioner was premature as it was moved before the commencement of trial. It is further submitted that the petitioners were not given opportunity to file reply to the said application. It is submitted that the order impugned thus be set aside or in the alternative, the petitioners be permitted to file reply and the trial court be directed to decide the application afresh.

6. In support of his submissions, the learned counsel for the petitioners has relied upon the following judgments of this court.

(i) Ramkrishna S. Kakad vs. Reojee Sahadu Kakad¹ ;

and

(ii) Sitaram S. Patil and anr. vs. Vasudeo S. Patil²,.

7. On 4.10.2021, this court passed the following order.

"1. Learned counsel for the respondents states that in terms of the directions issued in order dated 22/09/2020 passed by the Civil Judge, Junior Division, Madha, the Deputy L.L.R., Madha, has carried out the measurement of the suit land. He categorically makes a statement that the order is implemented when the Court Commissioner carried out the measurement of the suit land on 24/09/2021.

2. Learned counsel for the petitioners, however, dispute the same.

3. Since the Government is not a party to the proceedings, the Assistant Government Pleader is directed to verify the same from the Deputy L.L.R., Madha, whether the order dated 22/09/2020 is acted upon and whether the report is submitted to Civil Judge, Junior Division, Madha. Learned counsel for the parties to forward a copy of this order to the Assistant Government Pleader, who in turn, shall obtain instructions from the Deputy L.L.R. Madha and submit a report to this court on 18/10/2021.

4. Re-notify for 18/10/2021."

8. It is not the case of the petitioners that the report of D.I.L.R. is not necessary for deciding the controversy between the parties.

It appears that the Court Commissioner has already carried out

¹ Writ Petition No. 2749 of 2012 decided on 04.03.2013

² Writ Petition No.9626 of 2016 decided on 31.07.2017

the measurement of suit land. I am, therefore, not inclined to interfere with the impugned order. In the result, the following order is passed.

ORDER

Writ Petition is dismissed.

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[N.R.BORKAR, J.]