

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.327 OF 2020

Vishnu Tatyrao Dahiphale

Petitioner

Versus

Hanuman Trimbak Dahiphale

Respondent

Mrs. M.A. Kulkarni, Advocate for petitioner.

Mr. Shriram Deshmukh h/f. Mr. Devang Deshmukh, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th OCTOBER, 2023

ORDER :

1. Leave to correct prayer clause.
2. Petitioner is aggrieved by the order passed by learned Civil Judge, Junior Division, Parali-Vaijinath, below Exhibit- 67, in Regular Civil Suit No. 92/2010, thereby allowing the application of defendant for appointment of Court Commissioner.
3. Plaintiff filed suit for possession contending that defendant has encroached to the extent of 03 Are over the suit property i.e. Gut No. 267. Plaintiff has further claimed that eastern portion of Gut No. 267 and 268 has been acquired by

Government for Borna project. Plaintiff got his land measured by surveyor and measurement map Exhibit-49 is placed on record. Thereafter, again Court Commissioner was appointed for measurement of suit property by order dated 05.01.2012. Court Commissioner submitted measurement map Exhibit-39. Since, both these maps Exhibit-39 and 49 show different encroachment, defendant filed application Exhibit-67 for appointment of Court Commissioner, which is allowed by the Trial Court. Hence, the present petition.

4. Heard the learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto and the impugned order.

5. Learned advocate for petitioner assailed the impugned order contending that in spite of there being two measurement maps on record, Trial Court has committed an error in appointing the Court Commissioner. By appointing Court Commissioner defendant is trying to fill up lacunae and collect evidence and therefore, Trial Court ought to have rejected the application for appointment of Court Commissioner.

6. Learned advocate for respondent on the other hand supported the impugned order.

7. Perusal of record indicates that Court Commissioner who was examined in the suit has given admissions to the effect that he has not shown acquired area of Government in the measurement map. In order to match bandh of survey numbers and gut numbers, there should be two permanent marks. However, those two permanent marks are not shown in the measurement map. He has not measured whole survey no. 41 and without measurement of entire survey number, exact area of gut number cannot be taken out. Actual area of cultivation is not shown in the map. Trial Court after considering these admissions has allowed the application holding that, in order to ascertain exact area of gut number, area being cultivated by parties, and acquired by Government, re-measurement appears to be necessary.

8. Considering the lacunae in the measurement carried out by the Court Commissioner, Trial Court, in the facts of the present case is justified in allowing the application filed by defendant. There no illegality or perversity in the order impugned in the present petition. Writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]