

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1679 OF 2023

Rohini W/o Raghunath Hazare

.... Petitioner

Versus

Natha S/o. Laxman Raut
and others

.... Respondents

.....

Mr. D.G. Nagode, Advocate for the Petitioner

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Joint Civil Judge, Junior Division, Ashti, below Exhibit-26 in Regular Civil Suit No.58 of 2021.

2. The Petitioner/original plaintiff filed suit for measurement of the suit land of the petitioner as well as the defendants, and fixation of the boundaries by appointing Taluka Inspector of Land Records as Court Commissioner. The defendants gave no objection for the measurement and fixation of boundaries. The Trial Court has rejected the application holding that the petitioner/plaintiff has not produced the map of sub-division of Survey Nos.258/A and 258/AA, and the petitioner/plaintiff has not taken recourse of

provisions under the Maharashtra Land Revenue Code for sub-division of their property. In absence of the same, it is not possible to direct survey authority to measure the suit property and demarcate the area as claimed by the plaintiff. It is also held the plaintiff has suppressed material fact about the ownership and possession of the defendants over the suit land, and the lands of defendant Nos. 1 and 2 are not specifically described, therefore, the Trial Court came to a conclusion that there cannot be said to be any boundary dispute between the plaintiff and defendants. It is further held that the plaintiff has not sought joint measurement of Survey No.258/A and that of adjacent lands of defendants.

3. Heard the learned advocate for the petitioner. Perused the writ petition memo, annexures thereto and the impugned order. Though the respondents/defendants are duly served, they have not caused their appearance.

6. On going through the application Exhibit-26 filed by the petitioner, it is clear that he has sought joint measurement of Survey Nos.258/A and 258/AA of original Gut No.258, and prayed for fixation of the boundaries of the lands of plaintiff and defendants.

7. It is settled legal position that in a suit for measurement of property in question, and for fixation of boundaries, it is desirable to appoint Court Commissioner, which would help the Trial Court to effectively decide the dispute between the parties. In the case in hand, the defendants have given no objection for measurement and fixation of boundaries. There is every possibility that in case, the measurement is carried out, and the boundaries are fixed, the suit may not be prosecuted any further. While rejecting the application, the Trial Court has ignored these aspects. The impugned order, therefore, cannot be sustained.

8. In the result, the writ petition is allowed.

9. The impugned order dated 18/11/2022 passed by the learned Joint Civil Judge, Junior Division, Ashti, below Exhibit-26 in Regular Civil Suit No.58 of 2021 is hereby quashed and set aside.

10. Application below Exhibit-26 is allowed.

11. It is made clear that the petitioner shall bear the costs of the Court Commissioner.

[NITIN B. SURYAWANSHI]
JUDGE