

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3848 OF 2023

1. Gangadhar Iranna Darshanwad
 2. Shankar Iranna Darshanwad
 3. Dashrath Pundalik Dasatwar
 4. Nagabai w/o Iranna Darshanwad
 5. Gangabai w/o Dashrath Dasatwar
 6. Kamalbai w/o Gangadhar Darshanwad
 7. Laxmibai w/o Shankar Darshanwad
- Petitioners

Versus

Sundarbai Vitthalrao Rahere Patil

Respondent

Mr. S.V. Dixit, Advocate for the petitioners.

Mr. V.V. Bhavthankar, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2023

ORDER :

1. Leave to correct cause title and prayer clause.
Amendment to be carried out forthwith.

2. Petitioners are aggrieved by the order passed by Joint Civil Judge, Junior Division, Biloli, below Exhibit-127 in Regular Civil Suit No. 43/2015, thereby rejecting the application filed by the petitioners/defendants to reopen the case and to permit him to lead evidence in order to prove measurement map in respect of the suit property.

3. Respondent/plaintiff filed suit for declaration of ownership and possession over the suit property and for perpetual injunction against the petitioners/original defendants. After the parties led their evidence and the matter was at the stage of arguments, application Exhibit-127 is filed by defendant No. 2 seeking permission to lead evidence on the point of measurement map of the suit property dated 17.02.2016. Said application was opposed by the plaintiff. Trial Court rejected the application. Hence, the present petition.

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

5. Admittedly, the said measurement map is filed by the petitioners, along with the list of documents. Prima facie, there appears substance in the contention of the petitioners that inadvertently during the course of evidence, said map remained to be proved by examining the surveyor. It is not in dispute that the said map pertains to the measurement of the suit property, though, it was prepared in earlier suit.

6. The Trial Court has rejected the application holding that, it has not appointed surveyor in the present suit, defendants themselves filed map on record and hence it cannot be said that inadvertently they failed to prove it. Defendants have closed the evidence and the matter is fixed for final arguments. Defendants are trying to fill up the lacuna, which is not permissible. The Trial Court, therefore, held that application filed by the defendants is not tenable and hence rejected it.

7. The measurement map of the suit land, if permitted to be proved on record by examining the surveyor, it would not cause any prejudice to the plaintiff, on the contrary it would enable the Trial Court to effectively adjudicate the dispute between the parties.

8. Learned advocate for the respondent strenuously urged that the said map was neither proved nor exhibited in earlier suit and therefore it should not be permitted to be brought on record in the present suit.

9. The plaintiff is entitled to object to the admissibility, relevancy and proof of the said map during the final hearing of the suit. The Trial Court shall consider the said objection of the

plaintiff on its own merits, in accordance with law.

10. In view of aforesaid reasons, writ petition is allowed, subject to the cost of Rs. 5,000/- to be paid by petitioners to the respondent in the Trial Court.

11. Impugned order dated 20.03.2023, passed by Joint Civil Judge, Junior Division, Biloli, below Exhibit-127, in Regular Civil Suit No. 43/2015 is hereby quashed and set aside.

12. Application Exhibit-127 is allowed.

13. Petitioners/defendants shall examine the surveyor within a period of four weeks from the date of receipt of writ of this order.

14. Since the suit is of the year 2015, hearing of the suit is expedited.

15. Needless to state that, respondent is entitled to cross examine the surveyor.

[NITIN B. SURYAWANSHI, J.]