

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7162 OF 2023

Thakaji Dagdu Sase

.... Petitioner

Versus

1. Krushna Shivaji Gawali
2. Mandakini Sham Gawali
3. Shamda Sham Gawali
4. Ganesh Sham Gawali
5. Sonyabapu Dagadu Sale (Died)
Through his L.Rs.
- 5A. Balu Sonyabapu Sase
- 5B. Santosh Sonyabapu Sase
- 5C. Parigabai Sonyabapu Sase
- 5D. Sau. Babai W/o Murlidhar Gore
- 5E. Sau. Sumitra Shekhar Gore
- 5F. Sau. Sangita Baban Kasar
- 5G. Sau. Sharmila Satish Walke
6. Bhagwan Dagadu Sase
7. Radhabai Gorakh Darekar
8. Namdeo Shivaji Gawali

.... Respondents

.....
Mr. N.C. Garud, Advocate for the Petitioner
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned 5th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-104 in Regular Civil Suit No.710 of 2013, thereby rejecting the Application filed by the petitioner for remeasurement of land through Deputy Superintendent of Land Records.

2. By consent of plaintiffs and defendants, the Trial Court passed order below Exhibit-59, thereby appointing Deputy Superintendent of Land Records, Ahmednagar for measurement of the properties of plaintiffs and defendants. It appears from the record that, the Deputy Superintendent of Land Records directed his subordinate officer to carry out the measurements. Accordingly, measurements are carried out. The petitioner objected to the said measurement report and by filing Application exhibit-104, requested direction to the Deputy Superintendent of Land Records to carry out measurements and submit the report. The said Application is rejected. Hence, the petitioner is before this Court.

3. Admittedly, the Commissioner's report, the maps and measurements are required to be proved on record. The Commissioner is yet to be examined in the Trial Court. The petitioner has a right to cross-examine the Commissioner, and challenge his report before the Trial Court, as according to him the measurements carried out by the Court Commissioner are not proper. Without availing that opportunity, the petitioner has approached this Court. In that view of the matter, the writ petition being devoid of any substance and this Court is not

inclined to entertain the same in extraordinary writ jurisdiction.

4. The Writ Petition being devoid of merit is dismissed with liberty to the petitioner to challenge the Commissioner's report in the Trial Court.

5. If the petitioner is successful in proving through his examination that the Commissioner has not carried out proper measurements, he is entitled to file application for appointment of Deputy Superintendent of Land Records as Court Commissioner.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane