

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8874 OF 2018

Balaji Vaijnath Domkundwar

Petitioner

Versus

1. Namdev Raghuvir Gurme
2. Umakant Raghuvir Gurme
3. Govind Ramkishan Gurme
4. Dattatraya Ramkishan Gurme
5. Deputy Superintendent of Land Records
Ahmedpur, Dist. Latur.

Respondents

Mr. G.D. Kale, Advocate for the petitioner.

Mr. Shrikant Madde, Advocate for respondents No. 1 to 4.

Mr. S.R. Yadav Lonikar, AGP for respondent No. 5.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India, takes exception to the order passed by learned 3rd Joint Civil Judge, Junior Division, Ahmedpur, below Exhibit-39 in Regular Civil Suit No. 626/2016.

2. Petitioner/plaintiff filed suit for declaration and permanent injunction in respect of Gut No. 470, admeasuring 4 Hectare 85 Are, situated at village Sirur Tajband, Taluka-Ahmedpur. He also claimed a relief of declaration of ownership of

the said land. Defendants opposed the suit by filing written statement and say to the temporary injunction application. During the pendency of suit, petitioner filed application Exhibit-33 seeking appointment of Taluka Inspector of Land Record as Court Commissioner to carry out joint measurement of the suit property. Said application was allowed.

3. Pursuant to the order passed below Exhibit-33 Taluka Inspector of Land Record measured the lands on 22.09.2017 and prepared a report. He found that the total land of Gut No. 470, as per the revenue record is 14 Hectare 42 Are, whereas parties were found in possession of 11 Hectare 44 Are land.

4. By letter dated 11.12.2017, T.I.L.R. informed the Deputy Superintendent of Land Records, Ahmedpur, that there is huge difference in the area mentioned in the revenue record and area which is actual in possession of the parties and therefore he is not in a position to take proper decision, hence, he sought guidance of the said authority.

5. Deputy Superintendent of Land Records submitted report of Court Commissioner (Exhibit-38) in the Court on 14.12.2017. After receipt of the said report, petitioner filed

application Exhibit-39, for direction to measure the land mentioned in the said application, through the cadesal surveyor of T.I.LR./D.S.L.R., office, Ahmedpur. This application is rejected after hearing the parties. Hence, the present petition.

6. Heard the learned advocate for the petitioner, learned advocate for respondents No. 1 to 4 and learned Assistant Government Pleader for respondent No. 5. Perused the memo of writ petition, annexures thereto and the impugned order.

7. Admittedly, T.I.L.R., who measured the lands under the directions of the Trial Court below Exhibit-33 has found that the total area of land Gut No. 470, as per the revenue record is 14 Hectare 42 Are, whereas parties to the suit were found in possession of 11 Hectare 44 Are land, i.e. less land than mentioned in the revenue record. Facing this situation, he has sought guidance from the D.S.L.R., that since there is huge difference in the area in actual possession of the parties, he is not in a position to take decision and he is not in a position to complete the measurement and there is delay in carrying out measurement. It appears that instead of giving proper guidance, D.S.L.R., has submitted report Exhibit-38 in the Trial Court,

wherein it is specifically stated that the parties are required to approach the appropriate authority for correction of revenue record. Therefore, it is not possible to ascertain the area in possession of the plaintiff and defendants as per 7/12 extract.

8. In these facts, the plaintiff is justified in filing application Exhibit-39 seeking re-measurement, but the measurement ought to have been sought through D.S.L.R. The Trial Court has erred in rejecting the application on the ground that since the parties are in possession of less land than shown in 7/12 extract, Court Commissioner has rightly filed his report and nothing survives in the prayer of the plaintiff about encroachment and fixation of boundaries.

9. During the course of hearing of this petition, the Deputy Superintendent of Land Records was added as party respondent and learned Assistant Government Pleader was requested to take instructions from the District Superintendent of Land Records as to what course should be adopted in such situation.

10. Learned Assistant Government Pleader, on instructions, makes a statement that the disputed land needs to

be measured along with adjoining lands, then only this anomaly can be rectified.

11. The Trial Court while rejecting the application filed by the petitioner has ignored the fact on record that less land is found to be in possession of the plaintiff and defendants, than the revenue record. It is also ignored that T.I.L.R. had sought guidance from his higher officer informing him that, in view of difference in actual land in possession than the area shown in the revenue record, there is delay in carrying out measurement and with a view to finally resolve the dispute between the parties, it is necessary to direct the measurement of suit land along with adjoining lands.

The Trial Court has erred in relying upon the report of the D.S.L.R., who, without giving guidance sought by T.I.L.R., and without waiting for the measurement report, forwarded report Exhibit-38 to the Trial Court stating that in view of difference in area, the parties should approach the appropriate authority for correction of record. The Trial Court has further erred in ignoring the revenue entries and relying on the report of D.S.L.R. So as to resolve the dispute between the parties, it is necessary to direct the measurement of the suit land along with

adjoining lands. For the aforesaid reasons, the impugned order cannot be sustained. Hence, the following order:

ORDER

- I] Writ petition is allowed.
- II] Impugned order dated 26.04.2018, passed by learned 3rd Joint Civil Judge, Junior Division, Ahmedpur, below Exhibit-39 in Regular Civil Suit No. 626/2016 is hereby quashed and set aside.
- III] Application Exhibit-39 is allowed.
- IV] The Deputy Superintendent of Land Records shall measure the disputed land along with the adjoining lands, by issuing notice to the adjoining land owners, within a period of four weeks from the date of receipt of writ of this order.
- V] The measurement report shall be submitted by the D.S.L.R., to the Trial Court within a period of four weeks from the date of measurement.
- VI] The petitioners and the respondents shall jointly bear the expenses of the measurement.

[NITIN B. SURYAWANSHI, J.]