

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1401 OF 2023

Sayyed Jafar Mehtabsahab

.... Petitioner

Versus

Raosaheb Govindrao Pawar
and others

.... Respondents

.....

Mr. Suraj V. Gundre, Advocate for the Petitioner

Mr. M.B. Kolpe, Advocate h/f Mr. N.D. Kendre, Advocate for
Respondent Nos.2 to 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th September, 2023

ORDER :

1. Petitioner/plaintiff is aggrieved by the order passed by learned 7th Joint Civil Judge, Senior Division, Latur, below Exhibit-72 in Regular Civil Suit No.369 of 2011, thereby rejecting the application filed by petitioner for reappointment of Court Commissioner for joint measurement of suit property through Taluka Inspector of Land Records (for short, T.I.L.R.).

2. Petitioner/plaintiff has filed suit for removal of encroachment over the suit property. Defendants opposed the suit by filing written statement. By filing application Exhibit-25, petitioner/plaintiff sought appointment of T.I.L.R. as Court

Commissioner, which was allowed by the Trial Court. Accordingly, measurement was carried out not by T.I.L.R., but by Sheristadar working in the office of T.I.L.R. Sheristadar was examined as Court Commissioner at Exhibit-65. In his evidence, he has given admission that he is not trained to use E.T.S. machine. Two types of E.T.S. machines are available, but he does not know their names. He does not remember as to which type of E.T.S. machine was used by him. Measurement has to be carried out by keeping E.T.S. machine of north-east portion and then from there, further co-ordinates have to be taken. As per map produced by him, he placed E.T.S. machine on southern side. Entries in E.T.S. machine are to be taken in $L(\sin)$, $\cos$, θ (Thita), but he does not know meaning of those terms. E.T.S. machine has to be connected to the Computer and by using AutoCAD software, the map has to be prepared. He is not aware as to what AutoCAD software is. He has prepared the map from the person expert in AutoCAD software.

3. After recording of evidence of Court Commissioner, petitioner/plaintiff filed application Exhibit-72 for re-appointment of T.I.L.R. as Court Commissioner. This

application is rejected by Trial Court. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent Nos.2 to 5. Perused the writ petition memo, annexures thereto and impugned order.

5. Perusal of impugned order reveals that Trial Court has rejected application Exhibit-72 on the ground that earlier application filed by petitioner/plaintiff for appointment T.I.L.R. is allowed, and the previous measurement is on record. In the say filed by plaintiff at Exhibit-33, he has admitted that the letter along with map are true and correct. It is further observed that, in the examination in chief of Court Commissioner/Sheristadar, no suggestion is given by plaintiff's advocate regarding so called lacuna or defect in the measurement. No permission is taken for cross-examination or re-examination of that witness. Defendant has not admitted the said map. Trial Court further proceeded to observe that, it is admitted fact that plaintiff has every right to get his land re-measured from concern authority, he also has a right of *Nimtana Mojni*, if wrong measurement is taken by T.I.L.R.

6. Reasons assigned by Trial Court are erroneous. It is clear that Trial Court has ignored admissions given by Sheristadar in his evidence, which are self-explanatory and which leads to *prima facie* conclusion that he was not competent to carry out measurement, and he has failed to do the measurement properly since he was not trained for that purpose. Considering these aspects, the Trial Court ought to have allowed the application.

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

8. Impugned order dated 02/08/2022 passed by the learned 7th Joint Civil Judge, Senior Division, Latur, below Exhibit-72 in Regular Civil Suit No.369 of 2011, is hereby quashed and set aside.

9. Application Exhibit-72 is allowed.

10. Appointment of T.I.L.R. as Court Commissioner shall be made after conclusion of recording of evidence of both the parties.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane