

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5965 OF 2019
WITH
INTERIM APPLICATION NO.10214 OF 2022

Pandurang Baburao Mhatre

.. Petitioner

Versus

Raghunath Baburao Mhatre and Anr.

.. Respondents

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- Mr. Machhindra A. Patil for Petitioner
 - Mr. Sushil Upadhyay i./by Mr. A. M. Sarogi for Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2023

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner and Mr. Upadhyay, learned Advocate for Respondents.

2. Perused the impugned order dated 01.11.2018 passed below Exh.33.

3. Defendant (Petitioner herein) in the suit before learned Trial Court filed an Application seeking re-measurement of the joint properties held by the Plaintiffs (Defendants herein) and the Defendant as per partition deed which is the subject matter of the Civil Suit proceedings before the learned Trial Court. Interest of justice would be served if the impugned order dated 01.11.2018 is set aside and fresh directions are issued by this Court for reappointing of

surveyor and re-measurement of the joint properties so that the pending Civil Suit can be disposed of expeditiously. Both the learned Advocates appearing for the parties are *ad-idem* and by consent agree to the following order:

- i. the impugned order dated 01.11.2018 passed below Exh.33 stands quashed and set aside.
- ii. T.I.L.R., Pen is directed to appoint a surveyor to survey and carry out measurement of the joint properties held by the Plaintiffs and Defendants which is the subject matter of the suit proceedings before the learned Trial Court within a period of four weeks from today. Such measurement of the joint properties shall be carried out in presence of both the Plaintiff and Defendants. Both parties shall deposit 50% of the fees each for the above exercise and report with the TILR's office within one week from today as intimated by the TILR, Pen. The details of the joint measurement, report, map of the properties surveyed shall be given to the learned Trial Court in a sealed envelope. It would be the discretion of the learned Trial Court to give copy of the report and map of re-measurement to the parties concerned if the learned Trial Court feels it convenient to do so or an application by either party.

(iii) Parties shall approach the TILR's office with a copy of this order on 27.01.2023 and deposit the cost of Survey measurement and report by 31.01.2023.

4. The learned Trial Court is required to dispose of the Regular Civil Suit No.70 of 2015 within a period of ten months from today.

5. With the above directions Writ Petition No.5965 of 2016 stands disposed.

6. In view of the disposal of the Writ Petition, Interim Application No.10210 of 2022 and Interim Application No.10214 of 2022 are also disposed of.

[MILIND N. JADHAV, J.]

RAVINDRA
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AMBERKAR

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signed by
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