

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5529 OF 2022

1. Anil S/o Ajabrao Dahake,
Aged about 45 Years, Occ.
Agriculturist,
R/o Govindpur, Tahasil Chandur
Bazar, Dist. Amravati
2. Smt. Sudhatai Wd/o Shrikrushna
Bonde, Aged about 67 Years, Occ.
Household
3. Ajay S/o Shrikrushna Bonde
Aged about 55 Years, Occ.
Agriculturist
4. Smt. Jaya D/o Shrikrushna Bonde
Age : Major, Occupation Household
5. Smt. Sarika D/o Shrikrushna Bonde
Age: Major
6. Sanjay S/o Shrikrushna Bonde,
Age: Major, Occupation: Agriculturist
All are residents of Navin Changani
Nagar, Near Vitthal Mandir, Amravati
Dighi Road, Amravati, Dist. Amravati

...Petitioners

// VERSUS //

Damodar S/o Shamraoji Karale,
Aged about 52 Years, Occ. :
Agriculturist and service
R/o Wadhona, Tahasil Achalpur,
Dist. Amravati at present at House
No.8, Devi Mangal Building, Behind
Sai Palace, Nashik

... Respondent

Shri S.Y.Deopujari, Advocate for the petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 7th FEBRUARY, 2023.

ORAL JUDGMENT :

Heard.

2. By way of this writ petition, the order below Exhibit 1 dated 24th January, 2022 passed by the Civil Judge, Junior Division, Chandur Bazar, Dist. Amravati in Regular Civil Suit No. 87 of 2008 directing both the parties to carry out the joint measure through TILR, is under challenge.

3. Shri Deopujari, learned counsel for the petitioners points out that the said direction was not issued at the request of any of the parties to the suit but, the Court passed the above said order on its own motion at the stage, when the matter was fixed for argument.

4. It is submitted that earlier, the application Exhibit 49 was moved by the plaintiff with a similar request but it was rejected on the ground that the Government measurer has already measured the land.

5. It is submitted that Government measurer has accordingly entered into the witness-box as PW-1 and after the evidence of both the

parties were recorded and when the matter was fixed for argument the impugned order was passed. Accordingly, he submits that impugned order is unwarranted and liable to be set aside.

6. None for the respondents, though served long back.
7. On perusal of the record, it is evident that the plaintiff moved an application Exhibit 49 for appointment of Commissioner for joint measurement of the field and the learned trial Court vide order 24th April, 2013 rejected the said application on the ground that the Government measurer has already carried out the measurement. The findings recorded by the learned trial Court while rejecting the said application Exhibit 49 reads thus:

Heard both the sides at length and perused record. It appears that plaintiff examined his witness PW No.1 Bhaurao Bhanji Bagade who is measurer. From testimony of this witness it appears that plaintiff had measure field gat no. 176 which is 5 H. 06 R. He measure field of Anil Ajabrao Dhahake 1 H 21 R and field as Sunil Ajabrao Dhake 1 H 21 R and field of Damodar which is 2 H 64 R vide measurement case no. 1643/2007. Considering that measurement of field gat No. 176 of Mouje Asegaon Purna is already taken by Government measurer. So at this juncture, I do not found any sufficient and reliable reasons to allow application for joint measurement of field of plaintiff and defendant. Plaintiff had filed this suit by relying on the measurement of dt. 27.02.2008 measured by B.B.Bagade. Hence application is hereby rejected. No order as to cost.

8. From the impugned order, it can be seen that the order was not passed at the request of any of the parties, but the Court on its own motion without referring to the earlier order below Exhibit 49, passed it at the stage of argument. It is pertinent to note here that already the Government measurer has measured the land in dispute and submitted its report and accordingly he was examined as PW-1.

9. In the circumstances, I am of the opinion that the learned trial Court has committed error in passing the impugned order and directing both the parties to carry out joint measurement through TILR. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. The order below Exhibit 1 dated 24th January, 2022 passed by the Civil Judge, Junior Division, Chandur Bazar, Dist. Amravati in Regular Civil Suit No. 87 of 2008, is hereby quashed and set aside.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
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