



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

908 WRIT PETITION NO. 3047 OF 2023

Vishnu Eknath Sonne And Another
VERSUS
Basharnawaz Ramzan Khan And Another

...
Advocate for the Petitioner : Mr. Humbe Vilas M.
Advocate for Respondents : Mr. G. L. Deshpande

...

CORAM : R. M. JOSHI, J.

Dated : July 18, 2024

PER COURT :-

1. Heard. By consent of both sides matter is heard finally at admission stage.
2. Petitioners/ defendants in Regular Civil Suit No.156/2009 and appellant in Regular Civil Appeal No.274/2016 takes exception to order passed below Exhibit 21 rejecting the application for appointment of Court Commissioner to measure the suit land under Order 26 Rule 9 of the Code of Civil Procedure.
3. It is case of the petitioners that the respondents/ plaintiffs filed suit for injunction in respect of 9 R land from Gut No.2. Plaintiffs have claimed themselves to be owner of the suit property on the basis of registered sale deed dated 05/06/2000 executed by owner Kailash Sonne. Defendants filed written statement raising objection to the said sale on the ground that the vendor had no right to sale 9 R land from Gut No.2.

This is the only averment in the written statement.

4. Suit came to be decreed against which Regular Civil Appeal No.274/2016 is filed. During the pendency of the appeal, application Exhibit 21 is filed for measurement of the suit land. This application is rejected, hence this petition.

5. Learned Counsel for petitioners submits that the dispute is with regard to the 9 R land from Gut No.2 and unless the land is measured, the same cannot be determined. In support of his submission, he placed reliance on following Judgments of this Court : -

a) Malhar s/o Ganpat Bokerphod and Others Vs. Shivaji s/o Vishwanath Pawal, reported in 2014 (4) Mh.L.J. 237,

b) Raghunath Kashinath Chavan Vs. Sakharam Maroti Chavan and another, reported in 2019 (3) Mh.L.J. 183,

c) Baban s/o Madhavrao Malpe Vs. Yogeshwar s/o Purushottam Kanugo, reported in 2022 (6) Mh.L.J. 310.

6. Learned Counsel for respondents supported the impugned order.

7. In order to appoint measurer as a Court Commissioner, dispute between the parties with regard to the boundaries or the area of suit property is necessary. There is no such dispute raised by the defendant in his written statement. His sole contention is that his vendor had no right to execute sale deed in respect of 9 R land in favour of plaintiff. If it is this a case of defendants, question of measuring the property does not arise. In any case, no such attempt was made before the Trial Court to get the land measured.

8. Having regard to the fact that the issue of measurement is not involved here in this case, this Court does not find it appropriate to cause interference in the impugned order.

9. In view of the above, petition is dismissed.

(R. M. JOSHI, J.)

vj gawade/-.