



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8004 OF 2024

Sushilabai Tryambak Vani Died Through Lrs
Prakash Tryambak Kothavade And Others

VERSUS

Nirmlabai Bhimsing Patil Died And Others

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Mr. S. S. Kulkarni, Advocate for the Petitioners

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CORAM : R.M. JOSHI, J

DATE : JULY 31, 2024

PER COURT :

1. This Petition is filed by the original Plaintiff in RCS No. 38/2014 whereby her application for seeking injunction against Defendant Nos. 5 to 7 for restraining them from measuring their property and for removal of encroachment done by the Defendants on the suit property is rejected.

2. Petitioner is Plaintiff in above suit seeking injunction against Defendants from causing interference in possession of Plaintiff over the suit property which is final plot no. 274/2019 towards east side half portion admeasuring 298.85 sq mtr with construction of house thereon. There is no dispute about the fact that original Defendant nos. 1 to 3 were the owners of the

adjoining land which is a portion of the final plot no. 274/19. Initially suit was filed against Defendant Nos. 1 to 3. An order was passed by the Trial Court for appointment of Court Commissioner to measure both properties belonging to Plaintiff as well as these Defendants. Later on, these Defendants sold their property to Defendant Nos. 5 to 7. Since Plaintiff received notice from surveyor for measurement of the property of the Defendants, an application is filed before the Trial Court seeking injunction against these Defendants from carrying out measurement of their own property. This application came to be rejected by the learned Trial Court.

3. It is the submission of learned Counsel for the Petitioner that since there was a measurement already done of the suit properties, it was not open for the Defendant Nos. 5 to 7 to seek re-measurement of the same. It is submitted that since these Defendants could not have succeeded to seek another measurement through Court and to circumvent the order passed earlier and measurement carried by Court Commissioner, private measurement is done.

4. The only question arises before this Court is as to whether there could be an injunction clamped against a person from measuring his own property. The document placed on record *prima facie* indicates that the application was filed before the Deputy Superintendent of Land Records for measurement of the portion of the land belonging to the Defendants. The notice clearly indicates that these Defendants are shown as owners of the property which was to be measured and the Plaintiff is shown as adjoining owner. Issuance of notice to the adjoining owner is a normal practice followed in case of measurement of properties to avoid any dispute. Merely because a notice is received by the Plaintiff describing her as adjoining owner, she does not get right to seek injunction in order to prevent said measurement. In any case, no Court could be justified in injuncting any party to measure his property in accordance with law. The issue before the learned Trial Court only was to the extent as to whether the Defendant Nos. 5 to 7 could be restrained from carrying out measurement. Considering the stage at which injunction was sought, no other issue arose for consideration of Trial Court.

5. This Court finds on the basis of documents placed on record that the measurement of the property was of Defendant Nos. 5 to 7 and they were within their right to get done said measurement. Hence, there is no substance found in the Petition. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani