



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 11465 OF 2023

Pratapsing Jamsing Patil And Another
VERSUS
Daulatsing Julal Patil And Others

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Advocate for the Petitioner : Mr. N.N. Desale
AGP for Respondent/State : Mrs. K.R. Jamdhade
Advocate for Respondents 1 & 2 : Mr. C.P. Patil h/f. Mr. P.B. Patil (Borse)

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CORAM : ARUN R. PEDNEKER, J.

Dated : April 19, 2024

PER COURT :-

1. Heard the learned counsel for the parties.
2. By way of present writ petition, the petitioners are challenging the impugned order dated 12.6.2023 below Exh. 202 passed by the learned Civil Judge, Senior Division, Chalisgaon, District Jalgaon in Regular Civil Suit No. 187/2018, whereby the application filed by the plaintiffs/respondents herein for appointment of Court Commissioner i.e. D.S.L.R. for measurement of the suit land came to be allowed.
3. Briefly, the case of the petitioners is that the property bearing Gat No. 66/1 admeasuring 1 H. 50 R., Gat No. 66/2 admeasuring 1 H. 50 R. and Gat No. 66/3 admeasuring 1 H. 50 R. situated at Dasegaon, Tq. Chalisgaon, District Jalgaon belonged to the petitioners and respondent Nos. 4 to 11. So also the property to the extent of 80 R. from Gat No. 25 was sold in favour of the father of respondent Nos. 1 to 3/ original plaintiffs on 3.2.1970. So also respondent Nos. 1 to 3/original plaintiffs own property bearing Gat No.

67/3/A admeasring 90 R., Gat No. 67/1 admeasuring 1 H. 60 R. and Gat No. 67/2, admeasuring 1 H. 80 R. situated at Dasegaon, Tq. Chalisgaon. Certain lands were acquired by the State for the purpose of widening of Dhule Solapur highway. Notices were issued to all. Compensation was also paid. Respondent Nos. 1 to 3 filed R.C.S. No. 229/2016 before the learned Civil Judge, Senior Division, Jalgaon, seeking declaration of ownership of suit property and further prayed for compensation of land to the extent of 25 R. land. The plaintiffs further prayed that the revenue authorities be restrained from making payment of any amount of compensation to the petitioners.

4. The suit is resisted by the petitioners. In the civil suit before Civil Judge Senior Division, the respondent Nos. 1 to 3 filed application at Exh. 202 for appointment of Court Commissioner to demarcate the properties in terms of sale deed. By the impugned order dated 12.6.2023, the learned Civil Judge has appointed the Court Commissioner to measure the land bearing old Survey No. 25 and other lands. Hence, the order of Trial Court is challenged by the petitioners in the present writ petition.

5. It is the contention of the petitioners that the measurement of the properties is already conducted by D.S.L.R. Chalisgaon and the report to that effect, which was prepared in accordance with the established procedure, is placed on record at Exh. 196. It is contention of the petitioners that the plaintiffs may not call for second report.

6. Per contra, the learned counsel for the respondents submits that

earlier measurement was carried out by the D.S.L.R. for entire Gat No. 66 without any internal divisions and it was carried out at the instance of acquiring body. The learned counsel for the respondent submits that after the acquiring body had carried out the measurement, various sale deeds had been executed and property was divided into different Pot-Hissas and in order to ascertain the exact boundaries of the Pot-Hissas, the appointment of Court Commissioner is necessary and the trial Court has rightly appointed the D.S.L.R. and allowed the application.

7. The suit is at the stage of examination of the witnesses. Six witnesses of the plaintiffs are examined and as such, there is no collection of evidence at the instance of plaintiff. So it cannot be said that by virtue of appointment of Court Commissioner, evidence will be collected. The trial Court has held that it is necessary to determine the boundaries and after hearing the parties at length the trial Court has appointed the Court Commissioner. The Trial Court has also held that appointment of Court Commissioner is necessary for deciding the main issue. I do not see any error in the order passed by the Trial Court and no interference is warranted in the order of the Trial Court. In the result, the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

ssc/