



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13779 OF 2024

Munjaji Ravji More

VERSUS

Panditrao Sakharam More And Others

• Mr. P. N. Kalani, Advocate for the Petitioner

CORAM : R.M. JOSHI, J

DATE : DECEMBER 17, 2024

PER COURT :

1. Petitioner/Original Defendant No. 3 challenges order passed Exh. 12 in RCS No. 14/2024 dated 19.09.2024 whereby application filed by the Petitioner for inspection and measurement of the suit land bearing Block No. 391 came to be rejected.

2. The Plaintiff has filed suit for declaration of ownership and possession over the suit property. The Defendants resisted the said suit by filing written statement.

3. At the stage of argument of application Exh. 5, Exh. 12 came to be filed for spot inspection and measurement of the subject property. This application is rejected on the ground that there is no issue of

boundary dispute and encroachment is involved in the suit.

4. Learned Counsel for the Petitioner has drawn attention of the Court to the contentions of Petitioner in Exh. 12 which according to him required the appointment of the Court Commissioner if not for measurement then at least for spot inspection. To support his submissions, he placed reliance on order/judgments of this Court in the cases of Writ Petition No. 4947/2011, Dated 08.07.2011, Habibkhan s/o Inamuttankhan and Ors vs. Waman Govind Rathod and Ors, ALL MR-2012-1-803, Mr. Mohd. Hashim Ajmullah Khan vs. Vasiullah Nasibullah Khan and Ors, Appeal from Order No. 754/2013 & Malhar Ganpat Bokephod and others vs. Shivaji Vishwanath Pawal, Writ Petition No. 7094/2013.

5. There is no dispute about the fact that the provisions of Order XXVI, Rule 9 CPC cannot be exercised for the purpose of collecting evidence. Merely because, an application is filed below Order XXXIX, Rule 7 CPC, it cannot be ignored that for all practical purposes the Court Commissioner is sought to be appointed under Order XXVI, Rule 9 CPC. It is for the

parties to lead evidence first to substantiate their contention. An application moved at this stage will amount to collecting evidence through the order of Court. Apart from this, *prima facie* perusal of the record indicates that there is no dispute herein about the measurement of the subject property nor there is claim of any encroachment being done thereon. In such circumstances, neither question of local inspection or even measurement arise in this case. This Court, therefore, finds no perversity in the impugned order.

6. In view of above, Petition stands dismissed.

(R.M. JOSHI, J.)