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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4742 OF 2024

Dattatraya Krishnath Shinde

Petitioner

.. (Orig. Plaintiff)

Versus

Rajendra Shivayogappa Karimungi

Respondent

.. (Orig. Defendant)

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- Mr. Ashok B. Tajane a/w. Mr. Yuvraj A. Tajane and Ms. Kavita P. Shinde, Advocates for Petitioner.
 - Mr. Rajendra Haridas a/w. Mr. Abhijit Patil, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024.

P.C.:

1. Heard Mr. Tajane, learned Advocate for Petitioner and Mr. Haridas, learned Advocate for Respondent.

2. Today, when the matter is called out, I have asked Mr. Haridas, learned Advocate for Respondent to comply with the directions contained in the order dated 22.04.2024. Mr. Haridas in his usual fairness would submit that the Respondent is not in a position to comply with the directions at all.

3. In that view of the matter, I have heard Mr. Tajane and Mr. Haridas. I have perused the twin orders passed below Exhibit “30” and Exhibit “5” by the learned Trial Court in Regular Civil Suit No.3 of

2018 and by the District Court in Misc. Civil Appeal No.94 of 2023.

4. Briefly stated, the Plaintiff approached the learned Trial Court for seeking removal of encroachment and for possession in respect of the Suit property claimed by the Plaintiff of having been encroached upon by the Defendant in respect of Plot No.62. The Defendant has started construction on the Plaintiff's adjacent land holding. Plot No.62 is the subject plot belonging to the Plaintiff which is in question. This plot admeasures 117.36 square meters as described in paragraph No.1 of the plaint.

5. Plaintiff has contended that he purchased the said Suit property by registered sale deed in the year 2017. Thereafter the Plaintiff carried out a survey and obtained a Survey Report dated 31.10.2017 in respect of the Plaintiff's holding. Towards the northern side of the Plaintiff's plot, is the Defendant's plot being Plot No.23 which is out of the same Gat number being Gat No.704/1A/2/2.

6. It is contended by the Plaintiff in the Suit plaint that the Defendant has encroached upon the Suit property by carrying out construction of compound wall to the extent of 64.59 square meters on his plot. The Defendant claims to have to be in possession of the said Plot No.23 by virtue a registered lease deed of 99 years dated 07.08.2001. The Defendant claims to have constructed the compound wall in the year 2013 which is prior to the date of acquisition of the

Plaintiff's plot No.62 in the year 2017. *Prima facie*, it is clearly seen that the dispute raised by the Plaintiff as against the Defendant is with respect to demarcation of boundaries of their respective plots. The area of 64.59 square meters is not a small area and therefore being aggrieved, despite being in possession of a measurement map and Survey Report from the Competent Authority, the Plaintiff filed the Suit proceedings.

7. The Suit is filed in the year 2018 and at present, the Plaintiff has filed his Affidavit of evidence. Plaintiff has relied upon substantial documents, but four of the said documents are crucial and directly support the Plaintiff's claim namely the document of acquisition of Plot No.62 by the Plaintiff which is a registered deed, the measurement map and map of the plot of the Plaintiff's property as also of the Defendant's property namely Plot No.62 as also Plot No.23, the extract of Gat No.704/1A/2/2 out of which the Plaintiff has purchased property, certified copy of the NAPT order of Gat No.704/1A /2/2 and the original copy of the measurement map No.2678 pertaining to the Plaintiff's property.

8. In view of the dispute pending before the learned Trial Court in Regular Civil Suit No.3 of 2018, on the basis of the aforesaid assertion and negation by the parties, the dispute can be resolved by passing appropriate directions in the interregnum while allowing the

Regular Civil Suit to remain pending as it is.

9. Appropriate directions can be passed by this Court under the provisions of Rule 10 of the Maharashtra Land Revenue (Boundaries and Boundary Marks) Rules, 1969 and the provisions of Section 136 of the Maharashtra Land Revenue Code, 1966 for measurement of the properties belonging to the Plaintiff and the Defendant. Once the measurement is carried out, it would be absolutely clear as to whether the Defendant has transgressed the limits of the immovable property belonging to the Plaintiff in so far as the Plot No.62 is concerned and to what extent. Mr. Haridas would clarify that the Defendant is also in possession of substantial additional plots belonging to him in addition to the plot taken on lease.

10. Be that as it may, if the Defendant has encroached Plot No.62 on the Plaintiff and if according to the measurement of Plot No.62 which is ad-measured 117.36 square meters, it is found that 64.59 square meters belonging to the Plaintiff has been encroached upon, the same shall be demarcated by the Taluka Inspector of Land Records (for short “**TILR**”), Akkalkot.

11. In view of the above, TILR, Akkalkot is appointed by this Court as Court Commissioner with immediate effect. Parties are directed to appear before the TILR, Akklakot with a server copy of this order alongwith copy of all the documents that both the parties seek to

refer to and rely upon. It is directed that Plaintiff and Defendant shall place copies of their respective registered deeds, one of sale and other of lease before the TILR, rather complete copies of the said deeds alongwith any map appended thereto showing the areas and boundaries of their respective plots.

12. TILR shall consider the registered sale deed and also registered lease deed and / or the current revenue record and thereafter survey and measure both the properties belonging to the Plaintiff and Defendant. TILR shall prepare a measurement map after carrying out survey in the presence of both the parties of both the plots / properties. Parties are directed to remain present at the time of measurement. TILR is at complete liberty to prepare the map and show if any encroachment has been done, on the Plaintiff's Plot No.62 by the Defendant. The demarcation would be shown clearly. If any encroachment is not done, the same shall also be placed on record so as to enable the learned Trial Court to decide the Suit and pass appropriate orders therein.

13. The aforesaid exercise by the TILR shall be carried out within a period of four weeks from today positively without any extension whatsoever.

14. The cost of the TILR shall be borne entirely by the Defendant in the present case. The Defendant is directed to deposit the cost of

TILR immediately before the TILR on being informed after perusal of this order. It is directed that no delay or protraction shall be committed by the Defendant in the above exercise.

15. The Defendant is directed by this Court to file an undertaking in this Court within a period of one week from today that the above exercise shall be carried out as alluded to hereinabove and if any encroachment is found on Plot No.62 belonging to the Plaintiff, Defendant shall on his own motion demolish the same without recourse to any Court of law or any Appeal. Such undertaking shall be filed within a period of one week from today positively as an undertaking to this Court.

16. In the meanwhile, Defendant is prohibited from carrying out any construction on the Suit plot as he has failed to show any permission whatsoever granted by the Competent Authority for carrying out such construction on the Suit plot.

17. With the above directions, Writ Petition is allowed and disposed.

18. Liberty to apply in case of difficulty.

19. All contentions of the parties are expressly kept open and the learned Trial Court shall not be influenced by any observations made in this order, at the time of deciding the Suit proceedings on the

perusal of the Commissioner's report. Commissioner shall table the Report before the Trial Court within 6 weeks from today.

20. In view of the above order, Application filed below Exhibit "55" shall not survive and the same stands disposed of.

21. Both the parties shall ensure that the aforesaid exercise as directed shall be carried out within four weeks by the TILR, Akkalkot who shall make an endeavour to do the same. No extension of time shall be sought by him for carrying out the aforesaid exercise and it shall be carried out within the timeline stipulated by this Court. Liberty to apply in case of difficulty.

22. Parties are directed to appear before the TILR on 25th April, 2024 at 10:30 a.m. with a server copy of this Court.

23. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]