

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16587 OF 2024

SATISH
RAMCHANDRA
SANGAR

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SATISH RAMCHANDRA
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Date: 2024.11.29
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Dattatraya Krishnath Shinde

Age : 65 Years, Occupation : Trade,
Residing at : Utkarsh Nagar, Akkalkot,
Taluka : Akkalkot, District : Solapur.

...Petitioner
(Original Plaintiff)

Versus

Rajendra Shivayogappa Karimungi

Age : 60 Years, Occupation : Trade,
Residing at : Utkarsh Nagar, Akkalkot,
Taluka : Akkalkot, District : Solapur.

...Respondent
(Original Defendant)

Mr.Ashok B. Tajane:-	Advocate for Petitioner.
No one is present:-	On behalf of Respondent.

CORAM : S. M. MODAK, J.

DATE : 25th NOVEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Tajane for the Petitioner-Plaintiff.
2. It is true, this Court as per the order dated 24th April 2024 (Coram : Milind N. Jadhav, J.) passed in Writ Petition No.4742 of 2024 has appointed Taluka Inspector of Land Records (“**TILR**”) to measure the Suit land for the purpose of ascertaining whether there is

an encroachment by the Defendant on the Plaintiff's plot. My attention is invited to the various parameters laid down by this Court while doing measurement. They are in Para Nos.9, 10, 11 and 12 of the said order.

3. This order was passed when the trial Court has rejected the temporary injunction Application filed by the Plaintiff and the Plaintiff has also failed before the First Appellate Court. This Court, that is how, has appointed TILR for carrying out the measurement. The TILR has done the measurement and submitted a report to the trial Court vide his letter dated 30th July 2024 (Page No.205). The TILR opined that in fact, there is no encroachment and the Suit property is not a part of Gat No.704/1A/2/2/62. In fact, it is part of a lease-deed (as contended by the Defendant).

4. According to Mr.Tajane, the TILR has bye-passed the procedure. He raised several contentions including not considering the document of sale-deed of the Plaintiff, not considering the boundaries as per the document. Instead of that, he is simply proceeding on the basis of vahivat shown by the parties. Several contentions are raised.

5. My attention is invited to the objection taken by his client before

the trial Court to the measurement report. It is on Page No.207. This Court feels that the remedy for agitating the grievance and remedy for praying re-measurement is not before this Court but the Plaintiff can raise the grievances and pray for re-measurement before the trial Court only. When the appointment of TILR was made, at that time, this Court was seized of the Writ Petition. The report submitted by TILR is naturally with the trial Court. If, this Court will entertain the Petition and decide it in either way, either of the party will lose their one opportunity to challenge the order / findings, if against them. So, by granting a liberty, this Petition can be disposed of.

6. The Plaintiff has already filed an Affidavit of examination-in-chief and he is supposed to be cross-examined. It is but natural that the Plaintiff will apprehend that he will fail in the Suit if he will go on with said measurement map. So, the trial Court needs to decide fresh Applications prior to permitting the Defendant to cross-examine the Plaintiff.

7. In view of that, following order is passed:-

ORDER

- (i) The Petitioner-Plaintiff is permitted to file detail objection to the TILR's report before the trial Court within a period of

two (2) weeks from today.

- (ii) The Plaintiff-Petitioner is permitted to file a separate Application for re-measurement of the land.
- (iii) If it is filed, the trial Court is at liberty to decide the same after hearing both the sides on merits.
- (iv) The trial Court to decide such Application as early as possible, within a period of two (2) months from today.
- (v) Till the decision of that Application, the cross-examination of the Plaintiff is stayed.

8. The **Writ Petition is disposed of** accordingly.

9. It is made clear that there is observation about merit.

[S. M. MODAK, J.]