

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16072 OF 2023

Maruti Aaba Kale and Ors.

.. Petitioners

Versus

Kashiling Tanaji Gavade and Ors.

.. Respondents

.....

- Mr. Drupad Patil a/w. Mr. Dheeraj Patil, Advocates for Petitioners.
- Mr. Tejpal S. Ingale, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioners and Mr. Ingale, learned Advocate for Respondents.

2. On 24.01.2024, I had heard both the learned Advocates and passed the following order:-

“1. Heard Mr. Drupad Patil, learned Advocate for the Petitioners and Mr. Ingale, learned Advocate for Respondent Nos.1 to 3.

2. By virtue of the present Writ Petition, challenge is maintained to the twin orders dated 08.07.2020 and 11.10.2022 passed by the learned Trial Court and the learned Appellate Court which are concurrent orders rejecting the Application for T.I. under Exhibit “6” of the Plaintiffs. The Suit is filed in the year 2019 being Regular Civil Suit No.503 of 2019 seeking to challenge the order of the Collector passed under Section 138 of the Maharashtra Land Revenue Code, 1966 (for short “MLR Code, 1966”) determining the boundary of the Respondents’ plots which are adjacent to the Petitioners’ plots.

3. Mr. Ingale, learned Advocate appears for Respondent Nos.1 to 3. He would inform the Court that prior to the passing of the order under Section 138 of the MLR Code, 1966 by the Collector, a substantive Suit was filed by Petitioners at an earlier point of time for injunction. That Suit incidentally is pending.

4. Mr. Patil would however respond and submit that the present Suit is necessitated in view of the order passed under

Section 138 of the MLR Code, 1966 by the Collector. It is seen that the order passed under Section 138 can only be displaced / challenged by filing a substantive Suit otherwise it is an executable order. Considering that this is a Suit for injunction and determination of boundaries, I have impressed upon both the learned Advocates Mr. Patil as well as Mr. Ingale to consider determination of Regular Civil Suit No.503 of 2019 as expeditiously as possible and within a time bound programme. Mr. Patil has given his consent and submits to the orders of the Court, whereas Mr. Ingale submits that he needs to take appropriate instructions from the Respondents.

*5. At the request of Mr. Ingale, Writ Petition is kept for passing further orders on **29th January, 2024** at 02:30 p.m. It is clarified that this Petition shall be disposed of on the next adjourned date.”*

3. Mr. Patil, learned Advocate appearing for the Petitioners would inform the Court that he has received instructions to submit that with respect to Mojani Report No.6051 of 2016 dated 13.02.2017 the Petitioners / Plaintiffs shall undertake to file a Nimtana Application before the Competent Authority which may be directed to be carried out in accordance with law and in presence of both the parties.

4. This submission of Mr. Patil is not seriously objected to by Mr. Ingale. He would rather submit that considering that Petitioners were unsuccessful on two previous occasions in so far as determination of boundaries is concerned, the aforementioned request of the Plaintiffs seeking Nimtana if granted should be expedited and be directed to be effected in presence of both the parties. The submission made by Mr. Ingale is absolutely fair and acceptable to the Court.

5. In view of the above, it is directed that the Competent Authority i.e. the District Inspector Land Record, Sangli Division (for

short 'DILR') shall carry out Nimitana proceedings / measurement of subject properties namely Gat Nos.1417 / 2 and 1418 / 2 situated at village - Yelur, Taluka – Walwa, District – Sangli in the presence of both the parties and prepare a proper Report and submit it to the learned Trial Court. The date for Nimitana shall be *interse* conveyed by the learned Advocates to both the parties after it is fixed so as to ensure that both parties remain present on the said date. Looking at the convenience of the DILR, DILR is requested to carry out Nimitana Measurement proceedings within a period of four weeks from today. An appropriate Application shall be made by Petitioners / Plaintiffs within a period of five days from today alongwith the fees payable. All other necessary procedure requiring Notice to Mr. Ingale's client under Nimitana proceedings shall stand dispensed with. Needless to state that cost for Nimitana proceedings shall be paid by Plaintiffs / Petitioners to the DILR and appropriate receipt shall be issued to that effect.

6. As seen and noted in the previous order, there are two suits now pending between the parties. One is RCS No. 503/2019 against the order passed under Section 138(4) of MLRC, 1966. Second is RCS No.369/2018 wherein the impugned orders are passed denying temporary injunction.

7. It is directed that both the sides shall be at liberty to refer to

and rely upon Mojani Report No. 6051 of 2016 dated 13.02.2017 as also the Nimtana proceedings Report that shall be carried out by the DILR in support of their respective case. Learned Trial Court hearing both the suits with respect to the same suit property is therefore directed by this Court to determine and adjudicate the aforesaid suit proceedings within a period of eight months from today without being influenced by any observations made in this order strictly in accordance with law. All contentions of both parties including maintainability of the subsequent fresh suit filed to challenge the order passed under Section 138 (4) of the MLRC, 1966 is expressly kept open.

8. In view of the above order, the twin impugned orders dated 08.07.2020 and 11.10.2022 are quashed and set aside and both parties are directed to maintain *status quo* in respect of the suit properties until the determination of both the suit proceedings in accordance with law.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]