

Ajay

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

WRIT PETITION NO. 1814 OF 2024

Chhaya Tanhaji Ahinve and Ors. .. Petitioners

Versus

Kamal Kondibhaav Thikekar and Ors. .. Respondents

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- Mr. Anil D. Joshi, Advocate for Petitioners.
 - Ms. Pranali P. Raikar i/by Mr. Ajay A. Joshi, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2024.

P.C.:

1. Heard Mr. Anil Joshi, learned Advocate for Petitioners and Ms. Raikar, learned Advocate for Respondents.

2. There are two concurrent orders. The order dated 26.04.2022 passed below Exhibit “5” and “17” in Regular Civil Suit No.407 of 2021 which is at Exhibit “E” - page No.281 of the Writ Petition allowing Exhibit “5”. Detailed reasons are given in the order duly supported by documentary evidence which has also been noted extensively by the learned Trial Court. That apart, the learned Appellate Court has upheld the order dated 26.04.2022 in Misc. Civil Appeal No.33 of 2022 which is at page No.315 of the Writ Petition.

3. *Prima facie*, it is seen that in so far as the issue and dispute as to who is in possession of Gat No.791 i.e. Suit property is concerned, parties had appeared before the Village Dispute Resolution Committee and by employing a property surveyor one map was prepared. Thereafter parties relied upon the evidence of several witnesses *qua* each other before the Tahsildar alongwith the map and by order dated 01.11.2021 the Tahsildar directed the parties to approach the Civil Court for a decision on their dispute. Tahsildar held that Court Commissioner cannot be simplicitor appointed through a Government Agency on the basis of Affidavits and the map of the private surveyor as those documents cannot be considered as proof for final determination of the situation of the shares of the parties. There is a reference to the sale deed which has been taken into cognizance by the learned Trial Court in favour of the Plaintiffs and in that view of the matter every party has a right to its property. Learned Trial Court as also the learned Appellate Court has allowed Exhibit “5”.

4. Thus it is seen that there are two reasoned concurrent orders.

5. Today, Ms. Raikar appears for the Respondents. She has received copy of the present Writ Petition today and urges the Court to consider passing order on the next adjourned date after hearing the Respondents.

6. At the request of Ms. Raikar, stand over to **26th February, 2024.**

7. It is clarified that, present Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

[MILIND N. JADHAV, J.]

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