

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15764 OF 2024

Rupali Krushnat Karpe

... Petitioner

vs.

Maruti Ramchandra Karpe and Ors.

... Respondents

Mr. Himanshu Kode a/w. Ms. Janhavi Karnik :-	Advocates for Petitioner.
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CORAM : S. M. MODAK, J.

DATE : 10th DECEMBER 2024

P.C. :-

1. Heard learned Advocate Mr. Kode for petitioner/ plaintiff. The trial Court has rejected the request made by the plaintiff for measurement of the suit land through Taluka Inspector of Land Records [**TILR**]. This was on 5th April 2024 by the Court of Jt. Civil Judge Junior Division, Koregaon. While rejecting that prayer the trial Court has given following reasons :-

- (i) In the earlier Suit for partition the present plaintiff is defendant No.23. It indicates that the suit land is not partitioned (paragraph No.5).

- (ii) If the suit land is measured, it will amount to collection of evidence and it is not permissible (paragraph No.5).
- (iii) If it is measured, it will amount to bringing on record who is in occupation of the suit land.

2. Today the matter is listed for the first time. Instead of issuing notice to the respondents, only for one reason I am allowing petition and remanding the matter for fresh consideration. Reason is **while rejecting the prayer the trial Court has not properly considered the averments in the plaint.** This is not the Suit for removal of encroachment. The Suit is simplicitor for injunction. If their could have been Suit for removal of encroachment, then the question is different.

3. I have read the averments in the Plaint. Mr. Kode has invited my attention to the following averments on Page No.11 (plaint) and the averments on page No.17 – Application for appointment of Commissioner. They are as follows :-

- (i) Description of the land bearing Gat No.118 and Gat No.114 and its boundaries.

- (ii) Both the lands are having larger area and the plaintiff has purchased part of land from one Rohini Mate as per the sale deed dated 3rd February 2020.
- (iii) Paragraph No.3 of the plaint records the defendants are trying to encroach upon the share of the plaintiff.

4. Nowhere plaintiff has pleaded that act of encroachment is complete and in fact encroachment has taken place. **These averments are not considered by the trial Court.**

5. The petitioner claims to be the owner of this part of the larger land whereas defendants in the partition Suit have treated present plaintiff as co-sharer in the suit property. The issue in that Suit is about ascertaining the shares and issue in present Suit is about the plea of encroachment.

6. In view of that I am inclined to remand the matter back to the trial Court. This Court has only records observers about the factors to be considered (on facts) for deciding such application. The trial Court to consider those factors and decide the application afresh. In view of that, I pass following order.

ORDER

- (i) The order dated 5th April 2024 passed by the Court of Jt. Civil Judge Junior Division, Koregaon in Regular Civil Suit No.94 of 2022 is set aside.
- (ii) The trial Court is directed to hear both the parties on the application for appointment of Taluka Inspector of Land Records and decide the application afresh.
- (iii) The rights of both the parties are kept open. There are no observations about the merit.

7. Writ Petition is disposed of.

[S. M. MODAK, J.]

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