



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3636 OF 2019

(Shaligram s/o Totaram Bhise vs. Ramkrushna w/o Namdeo Ujed)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. Rahul Dhande, Advocate for the petitioner.
Mr. V. V. Joshi, Advocate for the respondent.

CORAM : ABHAY J. MANTRI J.

DATE : SEPTEMBER 23, 2024

Heard learned Counsel for the parties.

2) The petitioner/original defendant is aggrieved by the order dated 22/04/2019 passed below Exh.18 by the learned 3rd Jt. Civil Judge J. D. Buldana, in Regular Civil Suit No.63/2015 whereby, allowed the application to carry out the joint measurement of plots Nos.14 and 13 in dispute.

3) The learned Counsel for the petitioner vehemently contended that, according to the plaintiff, he had carried out the measurement of the suit property on 06/05/2014. Pursuant to said measurement, he filed the suit to remove the encroachment over the suit property. Even though, relying on the said measurement, with a view to collect further evidence, he moved an application Exh.18 seeking direction to appoint the Deputy Superintendent of Land Records (Dy.S.LR.) as a commissioner to carry out further joint measurement, which is not permissible in the law. However, the trial court erred in allowing the same.

4) To substantiate his contentions, he has relied on the judgment of this Court in the case of **Chandraro s/o**

Hanumantrao Wable vs. Dhondu s/o Fula Patil reported in **2012(2) Mh.L.J. 847** and submitted that in view of the law laid down in the said case, the plaintiff is not entitled to seek the relief as claimed, hence, he has urged to set aside the impugned order.

5) As against, learned Counsel for the respondent/original plaintiff strenuously argued that the learned Judge, after considering the facts of the case and judgment cited by the parties, has rightly allowed the application and directed DSLR to carry out a joint measurement and therefore, no interference is required in it.

6) He further canvassed that to resolve the controversy between the parties, it is necessary to conduct joint measurements of both plots. To substantiate his contention, he has relied on the judgment in the case of **Shyam Janardan Chaudhary vs. Asha Ramdas Katkar and another** reported in **2014(5)Mh.L.J.770** and **Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade** reported in **2011(3)Mh. L.J.348** and contended that if the Dy. SLR is directed to carry out the joint measurement, which would help the Court in arriving at a just decision; therefore, in view of the law laid down in the aforesaid authorities, he urges the dismissal of the petition.

7) I appreciated the submissions of both learned Counsel and perused the impugned order and the record. It seems that the respondent/original plaintiff filed the suit to remove the encroachment carried out by the petitioner/original defendant over plot No.14, which the plaintiff claimed belonged to him. So, the plaintiff sought relief directing the defendant to remove the

encroachment and permanent injunction for obstructing the suit property until the disposal of the suit.

8) To substantiate the contentions, the plaintiff relied upon the measurement map carried out by DSLR on 06/05/2014. However, upon negating the said measurement map by the defendant, the plaintiff moved application Exh.18 to carry out the joint measurement of the plots in question, which came to be allowed by the impugned order.

9) On perusal of the application, it does not appear that the plaintiff is aggrieved by the measurement dated 06/05/2014 carried out by the competent authority. However, the plaintiff moved this application only because the defendant denied the said map. No specific reason has been carved out for tendering the said application. The defendant resisted the said application, contending that the plaintiff wanted to collect the evidence to support his case, which is not permissible in law.

10) The Learned trial Court has considered the judgments relied upon by both parties and held that the dictum laid down in the case of **Chandraro Wable** (supra) does not apply to the case at hand as evidence is yet to commence and, in order to determine whether there has been an encroachment, it would be proper to get a measure of the plots in question from an expert and, therefore, allow the application.

11) It is worth noting that the plaintiff has relied on the measurement map dated 06/05/2014, which he has not disputed nor raised any grievance regarding the said map. On the contrary, he relied on the said map; in that case, it would not be proper to direct DSLR to re-measure the suit property to collect

the evidence on record. Moreover, the application does not indicate that the plaintiff has been aggrieved by the said measurement map. In such an eventuality, in my view, it would not be proper to direct the Dy.SLR to remeasure the plots in question.

12) Reliance is placed on the law laid down in the case of **Kolhapuri Lakade** (*supra*), wherein it is observed that “*the appointment of the Court Commissioner would assist the Court in arriving at a just decision.*” Similarly, in the case of **Shyam Chaoudary** (*supra*), this court observed that “*the appointment of the Court Commissioner can help the court to find out whether there has been an encroachment.*” Therefore, both the above petitions were allowed. However, in the case at hand, the plaintiff has already carried out the measurement from the competent authority with respect to the suit property, and he has not raised any grievance regarding the said map. But he relied on the said measurement map. Therefore, merely denying the said map by the defendant would not get him the right to conduct the joint measurement of the plots in question, as against permitting him to re-measure the suit property amounting to assist him in collecting the evidence to support his case, which is not permissible. Therefore, in my view, the dictum laid down in the above-cited judgments is not applicable, but the observations made in the case of *Chandarao* are applicable in the case at hand.

13) In the above backdrop, in my opinion, allowing the application by the Trial Court is wholly unwarranted. Thus, the impugned order cannot be sustained in the eyes of the law, and the same is liable to be set aside.

14) In the aforesaid background, I deem it appropriate to allow the petition. The impugned order dated 22/04/2019 passed below Exh.18 in RCS No.63/2015 is hereby quashed and set aside.

15) The writ petition is disposed of. No costs.

(ABHAY J. MANTRI, J.)

KOLHE