



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

WRIT PETITION NO. 5085 OF 2019

Nirmalabai wd/o Laxman Bakal and others ..vs.. Amol s/o Kamlakar Bakal and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V. Sohoni, Counsel for the petitioners,
None for the respondents.

CORAM : ABHAY J. MANTRI, J.

DATE : 19-10-2024

Heard Mr. Sohoni, learned counsel for the petitioners/original defendants and perused the record.

Despite service of notices, none appears on behalf of the respondents.

2. The petitioners are challenging the common order dated 19-06-2019 passed by the learned Civil Judge, Jr. Dn., Balapur, below Exhibits 115, 120, and 121 in Regular Civil Suit No.50/2005, whereby rejected the applications holding that “*the whole measurement done by the Deputy Superintendent of Land Record, Balapur (for short “DSLRL”) is faulty,*” and further observed that “*it is not possible for the DSLR to obey the directions of the District Court*”.

3. The learned Counsel for the petitioners vehemently contended that the petitioners, as well as the respondents, all raised objections about carrying out the measurement by the DSLR before the trial Court. However, the trial Court did not consider the objections and committed an error in rejecting the same. Hence, he

urged that the said order be quashed and set aside, and the matter is required to be remanded back to the Trial Court for consideration afresh.

4. He has also drawn my attention to Exhibits. 115, 120 and 121, whereby the petitioners and the respondents have raised the objection about the measurement carried out by the DSLR and the impugned order. He further submitted that the District Court, by order dated 01-03-2018, directed the trial Court to appoint any cadastral surveyor of Taluka Inspector of Land Record to measure the land pertaining to Gat No.504 and demarcate the boundaries of land admeasuring 1 H. 27 R. claimed by the plaintiffs and the boundaries of the areas claimed by the defendants and the matter was remanded back to the trial Court. Therefore, he urged for allowing the petition.

5. Having considered the submissions of the learned Counsel for the petitioner, it would be proper to reproduce the operative part of the order passed by the District Court in Regular Civil Appeal No.192/2009, which reads thus :

“(i) The appeal is hereby partly allowed.

(ii) The impugned judgment and decree dated 30-11-2009 rendered in Regular Civil Suit No.50/2005 by the learned Joint Civil Judge (Junior Division), Balapur, is hereby quashed and set aside.

(iii) The matter is remanded back to the learned Trial Court.

(iv) The learned trial Court shall appoint any cadastral surveyor or Taluka Inspector of Land Record (T.I.L.R.) as Commissioner to measure the land bearing Gat No.504 and to show the boundaries of land admeasuring 1 H. 27 R. claimed by the plaintiff and the boundaries of the area claimed by the defendants by virtue of registered sale-deed dated 27-05-1970, in land bearing gat No.504 at village Lohara, Tq. Balapur, District Akola.

(v) The commission charges shall be borne by the defendants.

(vi) The learned trial Court shall frame proper issue regarding title and possession of the plaintiff over the suit property.

(vii) Both the parties are permitted to lead additional evidence, if any, on the above issue. The learned trial Court shall also take into consideration the additional evidence led by the defendants in the present appeal vide Exs. 31 to 33.

(viii) The learned trial Court shall decide the suit afresh according to law within six months.

(ix) Parties are directed to appear before the learned trial Court on 12-3-2018.

(x) Parties to bear their own costs.

(xi) R & P be sent to the learned trial Court on or before 09-03-2018.

(xii) A copy of this judgment be sent to the learned trial Court for information and necessary compliance.

(xiii) Decree be drawn up accordingly.”

6. Bare perusal of the said order reveals that the Ad-hoc District Judge-1, Akola while remanding the matter, has categorically directed the trial Court to appoint the cadastral surveyor or Taluka Inspector of Land Record as

Commissioner to measure the land bearing Gat No.504 and to show the boundaries of land admeasuring 1 H. 27 R. claimed by the plaintiffs and the defendants by virtue of registered sale-deed dated 27-05-1970. So also, as per clause (vi) and (vii) of the said order, the trial Court is directed to frame the proper issue regarding the title and possession of the plaintiffs over the suit property and permit the parties to lead the evidence pursuant to the issues and shall decide the matter afresh.

7. Pursuant to the said order, the petitioners and the respondents have raised objections about the measurement carried out by the DSLR, and all have requested to discard the map and appoint a new commissioner. However, the Trial Court has not considered the said objections. On the contrary, the same was filed, observing that “*the whole measurement done by the DSLR is faulty and, therefore, it is not possible for the DSLR in a real sense to comply with the directions of the District Court.*” In such an eventuality, it would be proper for the learned Judge to direct the DSLR to remeasure the land in the presence of all the parties by following due procedure of law to determine the actual facts in issue. Despite that, the learned Judge ignored the said objections and filed the said objections. Therefore, in my view, the said order is liable to be set aside, and it would be proper to remand the matter to the trial Court for consideration afresh on the said objections.

8. In the light of the above discussion, I proceed to pass the following order:

(i) The impugned common order dated 19-06-2019 passed below Exhibit Nos.115, 120 and 121 by the learned Civil Judge, Jr. Dn., Balapur, is hereby quashed and set aside.

(ii) The matter is remanded to the Trial Court to consider the said objections afresh by affording opportunities to all the parties.

(ABHAY J. MANTRI, J.)

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