



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8105 OF 2013

1. Bharati Shyam Agrawal
Age: 47 years, Occu.: Household,
2. Akshay Shyam Agrawal
Age: 28 years, Occu.: Service,
3. Prachi @ Pranali Shyam Agrawal
Age: 23 years, Occu.: Education
All R/o Ghat Road, Chalisgaon,
Dist. Jalgaon

..PETITIONERS

VERSUS

1. Arvind Vishnu Yeole
Age: 69 years, Occu.: Agri.
2. Kusum Arvind Yeole
Age: 64 years, Occu.: Agri.,
Both R/o Sai Kitchen Trolleys,
Opp. J.J. Tower, Malegaon Road,
Chalisgaon, Dist. Jalgaon
3. Ratan Totaram Rathod
(Dismissed vide order dated 15/07/2016)

..RESPONDENTS

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Mr. R.S. Deshmukkh, Senior Advocate a/w Mr. A.R. Joshi, Advocate i/b Mr.
D.R. Deshmukh, Advocate for petitioners
Mr. L.V. Sangeet, Advocate h/f Mrs. M.L. Sangeet, Advocate for respondents

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CORAM : ABHAY J. MANTRI, J.
DATE : 21st NOVEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and, with the consent of learned counsel for the parties, heard finally at the admission stage.

2. By this petition, the petitioners / original plaintiffs are challenging the order dated 13th August, 2013, passed by 2nd Joint C.J.J.D., Chalisgaon, below Exhibit 102 in R.C.S. No. 8 of 2009, whereby the application filed by the petitioners to appoint the Court Commissioner for measurement of the land was rejected.

3. Mr. Deshmukkh, learned senior counsel, during the argument, has pointed out averments in the plaint and submitted that in paragraph nos. 1 to 4, the petitioners have averred that the respondents have made encroachment over the suit property. Therefore, it would be appropriate to get it measured. As such, he pointed out that the order passed by the learned Judge is illegal and perverse, and therefore, liable to be set aside. He further submitted that, if the petitioners are not afforded the opportunity to measure the land, their rights would be affected. Accordingly, he urged that the petition be allowed.

4. On the other hand, learned counsel for the respondents submitted that the impugned order passed by the learned Judge is just and proper as the petitioners have not made any prayer for cancellation of the sale deed nor made a prayer for seeking possession of the encroached land. As such, the application was not tenable. He further submitted that, as per the averments in paragraph no.6 of the plaint, the petitioners/plaintiffs categorically averred that they have already measured the land. Therefore, it is not necessary to remeasure the land. Similarly, although the petitioners have averred that the

land is measured, they have not produced any document evidencing measurement; accordingly, he urged dismissal of the petition.

5. Having heard learned counsel for both the parties and having gone through the record, at the outset, it appears that the petitioners/plaintiffs have filed the suit for handing over possession of the land in question to them as owners of the land. It is pertinent to note that they have not challenged the alleged sale deed dated 16th September, 2002, although they have averred that it was executed illegally by the concerned vendor. Similarly, they have neither claimed relief by way of a declaration that the sale deed is not binding on them nor contended that the defendants have encroached upon the suit land. Their contention was only that, based on a void sale deed, the defendants obtained possession and, therefore, the same be handed over to them. In my view, on the said ground alone, the petitioners are not entitled to seek the relief of appointment of a Court Commissioner to measure the land.

6. Apart from that, according to the petitioners, the cause of action occurred prior to six years of filing of the suit and in the absence of a challenge to the sale deed, the petitioners/plaintiffs are not entitled to seek possession of the land. Likewise, the petitioners/plaintiffs averred that they had already measured the land and, thereafter, realised that the defendants had encroached upon it. However, they have not produced any document or map on record to prove the same. Moreover, it appears that the evidence is ongoing, and the petitioners/plaintiffs have examined two witnesses.

7. Having considered the above discussion, it appears that it is not the case of the petitioners/plaintiffs that the respondents/defendants have encroached on their land, but contended that, based on a forged and fabricated sale deed, they have encroached upon the suit land. Thus, the question of the appointment of the Court Commissioner to measure the land does not arise.

8. The learned Judge has considered the averments in the plaint and rightly held that there is no need to measure the land. I do not find any illegality or perversity in the said order.

9. As a result, I do not find merit in the petition and, consequently, the petition being bereft of merit, stands dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand). The petitioners are directed to deposit the cost before the learned 2nd Joint C.J.J.D., Chalisgaon, within a period of eight weeks. On deposit of the cost, out of the said amount, an amount of Rs. 5,000/- be paid to the Respondent Nos. 1 and 2 jointly, and Rs. 5,000/- be credited to the State Government. If the petitioners fail to deposit the cost, then their right to proceed with the suit shall be forfeited. The rule is discharged. Inform the order to the learned trial Court.

(ABHAY J. MANTRI, J.)

SSD