



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 WRIT PETITION NO. 10188 OF 2025

SHARDABAI SHRIRAM BADE AND ANOTHER
VERSUS
KALYAN MANIKRAO PHASATE AND OTHERS

Mr. P. K. Wagh h/f Mr. B. S. Choure, Advocate for the Petitioners

CORAM : R. M. JOSHI, J.

DATE : 18th AUGUST, 2025

PER COURT :-

1. Heard.
2. This Petition takes exception to the order passed below Exhibit 119 in R.C.S No. 201/2008, whereby the Application filed by the Plaintiffs for not accepting the evidence sought by the Defendants vide Exhibit 116, came to be rejected.
3. The facts as they appear from the record indicate that the Plaintiffs file suit being R.C.S. No. 201/2008 seeking possession of the suit property. This suit was decreed by the Trial Court on 31/07/2015. Being aggrieved by the said judgment, Defendant filed Appeal before the District Court. This Appeal came to be allowed. The proceedings were relegated back to the Trial Court for decision afresh by issuing direction to appoint Cadastral Surveyor as Court Commissioner at the costs of

Plaintiffs for taking the joint measurement of land in dispute. Permission was granted to lead evidence in respect of the said report of measurement. There is further no dispute about the fact that originally suit was filed against Kalyan i.e. sole Defendant, however, during the pendency of Appeal Defendant Nos.2 to 4 were also added to the array of Defendant. In the light of this fact, Plaintiff led additional evidence.

4. Learned Counsel for the Petitioners/original Plaintiffs submits that the evidence led by the Defendants vide Exhibit 116 cannot be accepted in view of the direction issued by the Appellate Court. It is his submission that the Appellate Court has permitted the Trial Court only to record evidence in respect of the measurement of the disputed lands.

5. The learned Trial Court after considering the entire fact as recorded the reason for rejecting the Application that initially the suit came to be filed against sole Defendant, whereas by way of amendment during the pendency of the Appeal, the Defendant Nos.2 to 4 were added as Defendants therein. When the suit was decreed at the first instance, Defendant No.1 had not led any evidence. It is observed that in the interest of justice the possibility of hearing in leading evidence needs to be given. Thus, the learned Trial Court has recorded cogent reasons for this rejecting the Application filed by the Plaintiffs.

6. In the facts of the case, no perversity can be found in the said reason. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp