



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10290 OF 2024

Raghunath Jagannath Etkar And Another
VERSUS
Kakasaheb Kesarinath Dhongde And Others

- Mr. H. V. Tungar, Advocate for the Petitioners
- Ms. P. V. Langhe h/f Mr. V. R. Langhe, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J
DATE : JANUARY 17, 2025

PER COURT :

1. This Petition takes exception to the order dated 13.08.2023 passed below Exh. 87 in RCS No. 21/2019.

2. The impugned order indicates that an application filed by Plaintiffs/Respondents herein under Order XXVI, Rule 9 CPC for appointment of the Court Commissioner for measurement of the subject land came to be allowed by Trial Court. Apart from other contentions, it is the main contention of learned Counsel for Petitioner that the said application came to be entertained by the Trial Court when the suit was at the stage of pronouncement of the judgment. To

support his submissions that no such application can be entertained, he placed reliance on following judgments: Shri. Dinkar Pandhari Gole vs. Shri. Vitthal Namdeo Bobde and Others, 2010(1) ALL MR 766, Wasudeo Sonone and Anr vs. Jagannath Ramlaji Jugele, AIR 1986 Bombay 43 and Priyanka Nityanand Myana vs. Dr. Rahul Baburao More and Anr, 2019(2) ALL MR 814. Learned Counsel for the Petitioners further submits that the Trial Court has not recorded findings that proceeding was not for judgment but it has proceeded to decide the application on merit by ignoring the said objection raised by the Petitioners/Plaintiffs and hence, order impugned needs interference.

3. Learned Counsel for Respondent submits that though at one point of time the matter was for judgment, however, later on in fact Petitioners /Defendants made argument before the Trial Court and application filed by Plaintiffs vide Exh. 86 for making submissions came to be allowed. Thus, it is her contention that it can be seen from these facts that the suit was not for the judgment but at the stage prior to the stage of judgment and as such, judgments

cited supra would not apply to present case.

4. The order is passed in August, 2023 and undeniably at one point of time suit before Trial Court was kept for judgment. This Court, therefore, finds it appropriate not to relegate matter back to Trial Court but to call record from the Trial Court to ascertain the fact as to whether the proceedings before the Trial Court was at the stage of judgment. Record and proceeding is received. Perusal of the proceedings of RCS No. 21/2019 indicates that on 12.06.2024 the matter was adjourned for judgment as Plaintiffs as well as Defendants did not argue before the Court. It is thereafter an application was filed by the Petitioners/Defendants for making submissions. Defendants were permitted to make submissions. Thereafter, application Exh. 86 came to be filed by the Plaintiffs for seeking time to make oral arguments. This application was allowed. These facts indicates that the stage of the proceedings which was for judgment on 12.06.2024 was reverted back to the stage of argument. As such, it cannot be said that when the application exh. 87 came to be filed trial concluded

and the learned Trial court had closed the proceeding for judgment. In such circumstances, the judgments cited supra have no application to the present case.

5. Even on merit, having regard to the facts of the case and the issue involved for determination before Trial Court, no perversity is found in the impugned order. The Petitioners have not made out case to oppose an application for appointment of the Court Commissioner to measure properties. Needless to say that it would be for the Trial Court to decide the correctness or otherwise for measurement.

6. In view of above, Petition stands dismissed.

(R. M. JOSHI, J.)