



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 14141 OF 2024

ARJUN TULSHIRAM DHADGE AND OTHERS
VERSUS
SWAPNIL BABASAHEB DHADGE AND OTHERS

.....

Mr. Y. V. Kakde, Advocate for the Petitioners

CORAM : R. M. JOSHI, J.

DATE 28th JANUARY, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 114 dated 12th November, 2024 rejecting application for appointment of Court Commissioner to measure the suit property.

2. The facts which led to the filing of the petition can be narrated in brief as under:

(i) The petitioners/plaintiffs filed suit bearing R.C.S. No. 454/2020 seeking declaration and injunction in respect of the suit property prescribed in paragraph no.1-B. A declaration is sought that by adverse possession plaintiffs have become owners of the said property. So also injunction is sought. The pleadings of the plaint indicate that in May 2020 defendants measured the land in question. It was found then that the area in which the house of the plaintiffs is situated belongs to the share of defendants. Plaintiffs

therefore claimed that since the plaintiffs are residing in the said area for more than 12 years, they have become owners by adverse possession.

(ii) In the written statement there is specific denial of the case of plaintiffs that they are having the house in survey no. 309/9. It is claimed that defendants are owner and in possession of the entire land. Previously an application was filed by the plaintiffs before the Trial Court for appointment of Court Commissioner which came to be rejected on the ground that it was an attempt on part of the plaintiffs to collect evidence. This Court in Writ Petition No. 12181/2022 upheld the said order and granted liberty to the plaintiffs to file application for appointment of Court Commissioner after recording evidence of the plaintiffs.

(iii) In this backdrop application (Exhibit 114) came to be filed for measurement of the suit land.

3. Learned counsel for the petitioners submits that this Court has granted liberty to the petitioners/original plaintiffs to file application for appointment of Court Commissioner and pursuant thereto application is filed. It is his submission that in the cross-examination a suggestion was made on behalf of the defendants to the plaintiffs that the house of

the plaintiffs is situated in survey No. 309/8. On the basis of this suggestion it is argued that this amounts to disputing the identity of the suit property. He placed reliance on the judgment of this Court in case of ***Malhar s/o Ganpat Bokerphod and others Vs. Shivaji s/o Vishwanath Pawal, 2014(4) Mh.L.J., 237.***

4. At the outset it needs to be recoded that merely because this Court has granted liberty to the plaintiffs to file application for appointment of Court Commissioner, it does not mean that the trial Court is directed to allow such application. Any application so filed must be decided on its merits.

5. There cannot be any dispute about the fact that the appointment of Court Commissioner for the measurement of the suit property can be allowed provided it is a case of a boundaries dispute or dispute about the identity of the land. Needless to say that the such dispute needs to be culled out from the pleadings of the parties. The plaintiffs in the plaint has specifically claimed that the defendants have measured the suit property and it was found to be in their share. With these pleadings without taking exception to the measurement, the plaintiffs have claimed ownership on the basis of adverse possession. Even in the written statement, no dispute made with regard to the boundaries or identity of the property. All what is claimed is that

defendants are owner and in possession of entire survey no. 309/9.

6. Thus, from the pleadings there is no issue seen involved before the trial Court of measurement or identity of the suit property in order to appoint of Court Commissioner. The judgment in case of ***Malhar s/o Ganpat Bokerphod and others*** (cited supra) does not apply to the present case owing to the difference in the material facts involved in both cases. Since the issue of the boundaries dispute or the issue of identity of the property do not fall for the consideration of the Trial Court, question of appointment of Court Commissioner does not arise. Hence, petition stands dismissed.

7. This Court therefore finds no perversity in the impugned order to cause interference therein. Resultantly, petition stands dismissed.

(R. M. JOSHI, J.)

ssp