



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14035 OF 2023

Rahul Uttamrao Chavan

VERSUS

Anusayabai Laxman Bodke And Others

...

Advocate for Petitioner : Mr. S.S. Gangakhedkar

Advocate for Respondents : Mr. A. S. Khedkar

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : August 07, 2025

Pronounced on : August 13, 2025

FINAL ORDER :-

1. The petitioner impugns the order dated 29.11.2021 passed by the learned Civil Judge J.D., Mudkhed below Exhibit-82 in R.C.S. No.32 of 2015, seeking relief of fixation of boundaries of land gat no.448 to the extent of 31R within his ownership and also relief of perpetual injunction against the defendants.

2. According to petitioner, respondent/defendant no.1 is owner of the land to the extent of 1H 81R out of gat no.448, whereas respondent/defendant no.2 is owner to the extent of 1-H 10-R . Lands of defendants are on northern side of land of the petitioner. Defendant no.3 also owns land to the extent of

86 R in gat no.448. According to petitioner, he purchased land from Datta Piraji Hamand under registered sale-deed dated 23.5.2014 and, since then, he is enjoying ownership and possession of the land. According to petitioner, defendants, who are adjacent land holders, in collusion with each other, attempted to grab his property by raising boundary dispute. As such, he approached the Civil Court.

3. Respondents/defendants refuted petitioner's claim and denied that petitioner acquired ownership of 31R land and he was ever put into possession to that extent. According to defendants, even vendor of plaintiff was not in possession of 31R land as described in plaintiff's sale-deed.

4. In this background, petitioner filed an application for appointment of the Court Commissioner. Said application was rejected. Hence, petitioner had approached this Court vide writ petition no.11069 of 2016. This Court disposed off writ petition, with liberty in favour of petitioner to revive his prayer for appointment of Commissioner after recording of the evidence.

5. Later-on, petitioner filed an application Exhibit 61, seeking appointment of the Court Commissioner, however, Trial Court rejected his application. Again, petitioner approached this Court vide writ petition no.7684 of 2019, which was allowed vide order dated 22.7.2019. In pursuance to the order passed by this Court, Commissioner/TILR submitted his report of measurement dated 26.8.2019. Evidence of the Court Commissioner was recorded in the suit. Thereafter, petitioner filed an application below Exhibit-82 seeking appointment of the Court Commissioner for re-measurement of the suit land through S.L.R. Nanded. Learned Trial Court after considering rival submissions, rejected application. Hence, this writ petition.

6. Mr. Gangakhedkar, learned advocate appearing for petitioner vehemently submits that, this Court while allowing previous Writ Petition No.7684 of 2019, specifically observed that, if plaintiff had purchased 31R land from his vendor Datta, who deposed that he sold 31R land from his ownership to the plaintiff and; if defendants are found to be in possession of land in excess of what they owned as per revenue record, it

would be obvious that the purported disappearance of the share of plaintiff's land has landed in their possession.

7. By inviting attention of this Court to the cross-examination of cadastral surveyor/the Court commissioner, he submits that evidence recorded by Court Commissioner is inconsistent with measurement carried by him. Similarly, measurement is not done in accordance with original survey record. The Commissioner has failed to discharge his obligation and bring correct position on the spot before the Court. Mr. Gangakhedkar submits that the Court Commissioner has failed to superimpose original record of survey number on the map of spot measurement, hence there is technical discrepancy. According to Mr. Gangakhedkar, re-appointment of the Court Commissioner is desirable to secure the ends of justice. However, the learned Trial Court rejected the application on technical ground.

8. Per contra, learned advocate appearing for the respondent submits that petitioner was never in possession of the land, as claimed. Although, on paper he purchased 31R land, his vendor admitted that he was in the possession of only 4 R land. In this background, if the measurement map do not

show possession of the plaintiff on spot as claimed by him, no purpose can be achieved by directing re-measurement.

9. Having considered the submissions advanced and after perusal of the record, it can be observed that in pursuance of the order passed by this court in Writ Petition no.7684 of 2019, the Court Commissioner was appointed to measure the entire block. He carried out measurement on 26.9.2019 and submitted report of measurement at Exhibit-94 on record of the Trial Court. Evidence of the Commissioner is recorded in trial. The Map of measurement is on record. Perusal of the same clearly indicates position of Gat no.448, alongwith Lagu-Mudkhed to Umari Road and Lagu-Mudkhed to Dongaon Road. The area in possession of defendant nos.1 and 3 is shown with yellow marking. Area in possession of defendant no.2 is shown in violet colour marks. Land affected by roads is also shown in different colours. Apparently, within boundaries of gat no.448, 31R possessed by petitioner could not be located, as claimed by him.

10. In this background, trial court rejected application of the petitioner for re-measurement of the land, observing that merely because measurement map do not show possession

of the plaintiff in the land gat no.448, as claimed by him, re-measurement cannot be granted. Pertinently, Court Commissioner was appointed to measure the entire gat no.448, accordingly, TILR has done his job and shown land in possession of respective land holders. The plaintiff could not show area in his actual possession at the time of measurement. There is nothing to doubt correctness of report or criticize procedure adopted by the TILR. Plaintiff is free to establish his claim on the basis of his own evidence without relying upon map of the Court Commissioner and establish his possession over area of land, as claimed. In that view of matter no case is made out to re-appoint cadastral surveyor as Court Commissioner at this stage.

11. In the result, there is no merit in writ petition. Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR)
Judge

...