



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 243 OF 2024

Sudarlal Sukhlal Patil

VERSUS

Ajay Adhikrao Patil And Another

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Advocate for the Petitioner : Mr. Kulkarni Sanket S.

Advocate for Respondent No.1 : Mrs. Reddy R.D.

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CORAM : ROHIT W. JOSHI, J.

DATE : 19th AUGUST, 2025

P.C.:

1. Present petition arises out of judgment and order dated 30.10.2023 passed by the learned Civil Judge, Junior Division, Parola in Regular Civil Suit No.28 of 2015 thereby allowing the application filed by respondent/plaintiff for appointment of Court Commissioner. The respondent/plaintiff has filed the said suit claiming ownership over land bearing Gat No.316 admeasuring 0.73 HR.

2. It is his contention that the defendant has made encroachment over the said land and, therefore, decree for possession with respect to encroached portion by removal of encroachment may be passed. The defendant has filed written statement in which ownership of Gat No.316 by the plaintiff is not disputed. The issues have been framed in the matter and thereafter, the plaintiff has filed his evidence in lieu of examination in chief on 02.08.2017. Further, examination in chief of plaintiff came to be recorded on 06.02.2019 and 04.09.2019. The

cross-examination of plaintiff had commenced on 04.09.2019 and was completed on 04.03.2020. Thereafter, the plaintiff filed application for issuing witness summons to cadestal surveyor from the office of Tehsil Inspector of Land Records, who had earlier carried out measurement of suit property. The said application was allowed and witness summons were ordered to be issued to the cadestal surveyor initially vide order dated 25.11.2021 and thereafter vide order dated 30.10.2022. The evidence of said witness is not recorded. The plaintiff however filed application at Exhibit-64 on 13.03.2023, *inter alia*, praying for appointment of cadestal surveyor from the office of Tehsil Inspector of Land Records, Parola as the Court Commissioner for joint measurement of adjoining lands owned by plaintiff and defendants. The said application was opposed by the defendant. However, vide order dated 30.10.2023, the said application came to be allowed.

3. Learned advocate for petitioner states that after deposition of the plaintiff was recorded, an application was made for issuing witness summons to the surveyor who had earlier carried out the measurement. He contends that once such application was filed and witness summons were issued, the application for appointment of Court Commissioner ought not to have been allowed without examination of said cadestal surveyor. The learned Trial Court has observed that the earlier measurement by the cadestal surveyor was only with respect to suit

property bearing Gat No.316, which is owned by the plaintiff. The said measurement is not a joint measurement of land of plaintiff and defendant. The learned Trial Court has referred to judgments on the point which holds that in disputes pertaining to boundaries of adjoining lands, joint measurement for both lands is necessary. In that view of the matter, the learned Trial Court has allowed the application for appointment of Court Commissioner. The learned Trial Court has also observed in the order that parties have admitted ownership of respective properties. Although it is contended by the defendant that boundary marks in the sale deed of plaintiff are not correct, that of course is a matter to be adjudicated while the suit is decided on merits. No fault can be found with the order passed by the learned Trial Court for appointment of Court Commissioner for joint measurement of lands. The legal position in this regard is settled by catena of judgments. The impugned order, therefore, does not call for interference. Writ Petition is dismissed.

[ROHIT W. JOSHI J.]