



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2447 OF 2023**

Vasant Bhimrao Ghule	...	Petitioner
versus		
Maharashtra Government and Ors.	...	Respondents

Ms. Gauri S. Shah, for Petitioner.
Mr. S.D.Rayrikar, AGP for Respondent No.1.
Mr. Vishwanath Patil for Respondent Nos.2 to 4.

CORAM: N.J.JAMADAR, J.

DATE : 18 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to the order dated 17 September 2022 passed by the learned Civil Judge, Pandharpur, whereby the application (Exhibit 65) preferred under Order XXVI Rule 9 of the Code, 1908 to appoint Deputy Superintendent of Land Records, Pandharpur, as the Court Commissioner to take joint measurement of lands bearing Gat Nos.1 and 716 and Patkuroli to Pehe (Narsinghwadi) road and fix four boundaries of the said lands and submit a report, came to be rejected.
3. The Petitioner has instituted the suit seeking injunction against the Respondents to restrain them from causing obstruction to the possession and enjoyment of the Plaintiff over the suit property and demolish part of the structures which stand on the suit property. The Plaintiff had filed an

application (Exhibit 41) seeking joint measurement of the suit property Gat Nos.1 and 16 and Patkuroli to Pehe (Narsinghwadi) road and to fix boundaries thereof. By an order dated 8 February 2022, the learned Civil Judge had appointed the Superintendent of Land Records to carry out joint measurement of the suit property, Gat No.716 and Patkuroli to Pehe (Narsinghwadi) Road and submit report to the Court. The Deputy Superintendent of Land Records has, accordingly, carried out joint measurement and submitted report (Exhibit F to the Petition).

4. Learned Counsel for the Petitioner submitted that the Deputy Superintendent of Land Records has expressed his inability to show the boundaries of the land bearing Gat Nos.1 and 716 as the revenue record is not available with the authorities. In the absence of the determination of the boundaries of Gat Nos.1 and 716, the question in controversy cannot be decided. The Petitioner was, therefore, constrained to again seek appointment of the Court Commissioner to have a joint measurement of the said properties and submit a fresh report. The learned Civil Judge, thus, could not have rejected the application on the ground that the measurement has already been carried out.

5. In the impugned order, the learned Civil Judge has noted that the measurement has been carried out almost four times; the last one, pursuant to the order passed by the Court on 8 February 2022, and, thus, further

directions to re-measure the lands was not necessary for determining the disputes between the parties.

6. Learned Counsel for the Petitioner submitted that since the Deputy Superintendent of Land Records has himself expressed his inability to fix the boundaries for want of revenue record with regard to the sub-divided survey numbers, the Report submitted by the Deputy Superintendent of Land Records is of no assistance. In such a situation, a direction for re-measurement of the suit lands is indispensable. Reliance was placed on the judgments of this Court in the cases of Vijay son of Shrawan Shende and Ors. V/s. State of Maharashtra and Ors.¹ and Tajmulhussain s/o Mulla Mumtaz Hussain V/s. Satish s/o Bhanudas Chavan².

7. I have perused the aforesaid judgments. They were rendered in a completely distinct fact-situations.

8. Evidently, the Deputy Superintendent of Land Records has submitted report pursuant to the order passed by the Trial Court on 8 February 2022 to have a joint measurement of the suit lands and Gat Nos.1 and 716 and Patkuroli to Pehe (Narsinghwadi) Road. The only inability expressed by the Deputy Superintendent of Land Records to fix the boundaries of Gat No.716 was on account of absence of revenue record with regard to the sub-divided survey No.716.

1 2009(5) Bom. C.R. 306

2 1993(95) Bom LR. 689

9. It must be noted that the suit has been instituted for injunction simplicitor. The Deputy Superintendent of Land Records has already carried out measurement and submitted report. The Court Commissioner, can, thus, be examined touching the report of the Commission. After examining the Court Commissioner, if the trial Court finds that re-measurement of the suit lands is necessary so as to equip the Court to decide the question in controversy, in a just and effective manner, the trial court may adopt the said course. At this stage, there is no justification to seek re-measurement of the suit lands bearing Gat Nos.1 and 716 and the road. I am, therefore, not inclined to interfere with the impugned order.

10. The Writ Petition, thus, stands dismissed.

11. Rule discharged.

(N.J.JAMADAR, J.)