

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.918 OF 2024

Yatin Arun Doshi and Another ...Petitioners

vs.

Subhash Pirappa Lambture and Others ...Respondents

Mr. Swaroop Karade, for the Petitioners.

Mr. Bhalchandra Shinde, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 13, 2025

P.C:

1. The petitioners/ defendant Nos. 1 and 1A take exception to an order passed by the learned Civil Judge, Indapur on 7th November, 2023 on an application (Exh.52) in RCS No. 318 of 2014 whereby the learned Civil Judge appointed T.I.L.R., Indapur as a Court Commissioner to carry out measurement of the suit property and show the encroachment, if any, and submit a report to the Court.

2. The plaintiffs are the holder of the property bearing CTS.No.0 4156 (the suit property). The defendant No.1 and 1A are holders of the properties on the southern side of the suit property, i.e. CTS No. 4159. The property of defendant No. 2 bearing CTS No. 4155 is situated on the northern side of suit property. In the wake of the boundary disputes, the plaintiffs filed an application before the Dy. Superintendent of Land Records to measure the suit property.

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Measurement was carried out on 31st January, 2014. It transpired that the defendant No.1 and 1A have committed encroachment over the southern side portion of the suit property and defendant No. 2 has also committed encroachment over the northern side portion of the suit property. Hence, the action for removal of encroachment and delivery of possession of the encroached portion of the suit property.

3. In the said suit, the plaintiffs filed an application for appointment of the Superintendent, Land Records, Indapur as a Court Commissioner to measure the suit land and submit a report. By the impugned order, the learned Civil Judge was persuaded to allow the application as the dispute was related to encroachment over the suit property.

4. Mr. Karade, the learned counsel for the petitioners, would submit that there was no justifiable reason to appoint a T.I.L.R, Indapur as a Court Commissioner to measure the land when the plaintiffs had already carried out the measurement and relied upon the map prepared by the Cadastral Surveyor. The only reason assigned in the application was that the defendants were raising technical objections to the said measurement. That was a matter for adjudication at the trial.

5. Evidently, the suit has been instituted for removal of

encroachment and delivery of possession of the encroached portion of the suit property. Before institution of the suit itself, the plaintiffs had made an application to Dy. Superintendent of Land Records and got the suit property measured and had also relied upon the report of the said measurement. From the perusal of the said report, it however appears that the only property bearing CTS No. 4156 was measured. In case of a boundary dispute and demarcation of the land, between adjacent land holders, it is imperative that all the properties are jointly measured. Separate measurement of one of the properties does not give a clear picture as to the exact area of the respective land parcels and encroachment, if any, by the holder of one property over the other. **Haryana Waqf Board vs. Shanti Sarup and Others¹**.

6. Since the suit has been instituted for removal of encroachment, the impugned order directing appointment of T.I.L.R., Indapur as a Court Commissioner to measure the land and submit a report cannot be faulted at. However, in view of the allegations that the defendant No. 1 has committed encroachment over the southern portion of the suit property and defendant No. 2 has committed encroachment over the northern portion of the suit property, the trial Court ought to have directed the joint measurement of all the three properties and not the suit property

1 AIR 2008 SC (SUPP) 616.

only. Therefore, the impugned order deserves to be modified to the aforesaid extent.

Hence, the following order.

ORDER

- 1] The petition stands partly allowed.
- 2] The impugned order passed by the learned Civil Judge, Indapur stands modified.
- 3] The T.I.L.R., Indapur shall carry out a joint measurement of the suit property i.e. CTS No. 4156; the property of defendant No. 1 and 1A i.e. CTS No. 4159, and the property of defendant No. 2 i.e. CTS No. 4155, and submit a report to the trial Court.
- 4] Rest of the conditions in the impugned order remain unaltered.
- 5] Petition disposed.
- 6] No costs.

(N. J. JAMADAR, J.)