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

WRIT PETITION NO. 178 OF 2015

Sumatilal s/o Premraj Dugad ... Petitioner

VERSUS

Shri Ramanlal s/o Shantilal Dugad
& others ... Respondents

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Mr. D.L. Khivesara, Advocate for petitioner
Mr. M.S. Kulkarni , Advocate for respondent Nos. 1 & 2
Mr. G.D. Jain, Advocate for respondent Nos. 3 to 7

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th JANAURY, 2015

PER COURT :

1. The petitioner is aggrieved by the order below Exhibit 5 in R.C.S. No. 168 of 2014 dated 21-11-2014 by which a Court Commissioner has been appointed

2. The grievance of the petitioner / defendant No. 6 in R.C.S. No. 168 of 2014 is that application moved by the plaintiff for appointment of Court Commissioner has been allowed, despite objections raised by the petitioner and despite issues having not been cast in the matter. Exhibit 30 which is the reply of the petitioner along with defendant Nos. 1 to 5, indicates in paragraph No.1, 2 and 3 that they had opposed the appointment of a Court Commissioner.

3. In paragraph No. 3 of the impugned order, the Trial Court has recorded that the learned Advocate for the petitioner and defendant Nos. 1 to 5, had conceded that the Court Commissioner be appointed. It is also recorded that they had in fact prayed that necessary records available with the Deputy Director of Land Records, Shrigonda should be considered and thereafter Gut No. 4 should be properly inspected and measured.

4. Learned Advocate submits on instructions that the petitioner Advocate had never given such consent as is recorded in paragraph No. 3 of the order. However, I find that there are no such pleadings in the memo of the petition.

5. Shri Kulkarni, learned Advocate appearing on behalf of respondent Nos. 1 & 2 submits that the impugned order is passed by consent. Defendant Nos. 1 to 5 having not challenged the order and defendant No. 6 who is the petitioner having not made any averment in the memo of the petition that the consent recorded in paragraph No. 3 of the impugned order was in fact never given, it would not be open for this Court to consider the oral statement of the petitioner.

6. I find that the Trial Court has specifically recorded the consent of defendant Nos. 1 to 6. It is not in dispute that they are

represented by the same Advocate whose name is mentioned in paragraph No. 3 of the impugned order. I also find that neither defendant Nos. 1 to 5 have challenged this order, nor has the petitioner specifically pleaded in the petition that the consent was not given and that the same has been recorded against the desire of defendant Nos. 1 to 6 by the Trial Court. In the absence of such pleadings, I am unable to consider the oral submission of the petitioner/ defendant No. 6 that the Trial Court has inappropriately recorded the consent of his Advocate.

7. In the peculiar facts of this case, as recorded above and in view of the consent recorded by the Court in the impugned order, I am not inclined to cause any interference. In the event the petitioner has any grievance about the recording of the consent made in paragraph No. 3 of the impugned order dated 23-11-2014, the petitioner may deal with the same as he may deem fit proper. As such, the petition is dismissed.

(**RAVINDRA V. GHUGE, J.**)

SDM* JANAURY-2015