

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO.31973 OF 2015

Mr.Babulal Pukhraj Jain ..Petitioner
V/s.
Satish Govind Jagtap & Ors. .. Respondents

Ms.Jaymala Ostwal i/by M/s.J.J. Associates for the Petitioner.
Mr.A.B.Tajane for the Respondent nos.1 and 2.

**CORAM : R. M. SAVANT, J.
DATE : 27th NOVEMBER, 2015.**

P.C.

1. The writ jurisdiction of this Court is invoked against two orders i.e. order dated 14th September 2015 passed below Exh.194 and order dated 27th October 2015 passed below Exh.205 in Civil Suit No.140 of 2007. The Petitioner is the Defendant in the said suit. The said suit has been filed by the Respondents herein for eviction of the Petitioner on the grounds mentioned in the said suit. It appears that prior to the present suit, the Petitioner herein had filed Civil Suit No.281 of 2001 against the Respondent herein claiming an injunction and the suit premises were three Rooms and Veranda totally ad-measuring 3600 sq.ft. in bungalow no.10 known as “Ashirwad”

situated in CTS No.682/10, Jedhenagar, Bibwewadi, Pune. The said suit came to be decreed and an injunction was granted to the Petitioner restricted to the three rooms and the veranda and the case of the Petitioner was rejected in respect of the open space. The said judgment and decree passed by the trial Court dated 14th February 2008 has been carried in Appeal by the Petitioner herein and Civil Appeal No.166 of 2008 is pending and in the said Appeal, according to the learned counsel for the Petitioner, an order of status quo is operating till today. The said suit it seems came to be decided after the instant suit, being Civil Suit No.140 of 2007 came to be filed. It seems that in the instant suit the Petitioner herein is claiming right to the open space surrounding the bungalow on the basis of adverse possession. The Petitioner (Original Defendant) filed an application (Exh.156) for appointment of the Court Commissioner to submit a report alongwith the photographs of the entire property consisting of constructed portion and the open space. The said application came to be allowed by the Trial Court by order dated 31st March 2015 and the trial Court appointed an Advocate as Court Commissioner for inspection of

the suit premises.

2. The Petitioner thereafter filed an application for modification of the said order dated 31st March 2015 to the extent that the Court Commissioner may be directed to inspect the entire property i.e. CTS No.682/10, bungalow no.10 known as “Ashirwad”, Jedhenagar, Bibwewadi, Pune. The said application came to be rejected by the Trial Court by the first impugned order dated 14th September 2015. The rejection is principally on the ground that in the suit filed by the Petitioner being Civil Suit No.281 of 2001, the Court has rejected the claim of the Petitioner in the said suit that he is in possession of the open space admeasuring 3600 sq.ft. The Trial Court also adverted to the fact that the Trial Court in the said earlier suit had rejected the argument urged on behalf of the Petitioner that the whole bungalow was let out to the present Petitioner on rent. The Trial Court has deemed it appropriate to reject the application on the ground that the said decree has attained finality.

3. The Petitioner thereafter filed another application being Exh.205 for recall of the order passed on Exh.194 dated 14th September 2015. The said application (Exh.205) has also been rejected on the self same ground as the application at Exh.194. However, in addition, it has been mentioned by the Trial Court that the scope of the reference to the Court Commissioner cannot be enlarged in view of the fact that the Petitioner is claiming title to the open space by adverse possession.

4. The learned counsel appearing on behalf of the Petitioner sought to contend that the trial Court has erred in rejecting the application on the ground that the decree passed in Civil Suit No.281 of 2001 has attained finality. It is the submission of the learned counsel that the said decree is challenged and the Appeal filed, an order of status quo has been passed and, therefore, the Trial Court ought to have enlarged the scope of the reference made to the Court Commissioner so as to cover the entire property.

5. In my view, it is not possible to accept the said contention urged on behalf of the Petitioner that though the decree passed in Civil Suit No.281 of 2001 on the ground of bona fide requirement and non-user has been appealed against by the Petitioner, one thing cannot be lost sight of is the fact that the Petitioner is laying a claim to the open space by way of adverse possession. Hence, the Trial Court was right in rejecting the application for recall of the order passed below Exh.205 on the said basis. It is well-settled that a party claiming adverse possession must prove the same by cogent evidence and a Court Commissioner cannot be appointed for reporting about the possession. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. Hence, Writ Petition is, accordingly, disposed of.

(R. M. SAVANT, J.)