

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.429 OF 2016**

Ramchandra Nivruti Rupnar

..Petitioner

Vs

Kantabai Jagannath Patil, since
deceased through her legal heirs
Prashant Sampatrao Patil

.. Respondent

Mr. Mahindra B. Deshmukh, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 15/01/2016

PC:

1. Heard Mr. Mahindra Deshmukh, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the judgment and order dated 17.11.2015 passed by the learned Jt. Civil Judge, Jr. Dn., Kadegaon below Exhibit 75 in R.C.S.No.387 of 2008. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant', for appointment of Court Commissioner.
3. Mr. Deshmukh submitted that Gat No.51/B is ancestral property of the defendant. The plaintiff had purchased 31 Ares from Gat No.1734 in the year 1998. It is the case of the defendant that there is a Bandh between the property of the

plaintiff and the property of the defendant. As against this, the respondent-plaintiff denied the existence of the Bandh. The defendant, therefore, filed application for appointment of Court Commissioner.

4. By the impugned order, the learned trial Judge rejected the application on the ground that the plaintiff has instituted suit for removal of encroachment and possession of the encroached area. The plaintiff alleged that the defendant has committed encroachment to the extent of 5 Ares on the eastern side of his property. The plaintiff carried out measurement through T.I.L.R. and thereafter filed suit for removal of encroachment. The defendant denied having made any encroachment, and on the other hand, alternatively contended that if it is found that there is an encroachment, he has become owner of the encroached portion by way of adverse possession.

5. In view of the controversy between the parties as to whether the defendant committed encroachment or not, Surveyor was appointed from the office of Dy. Superintendent of Land Records as a Court Commissioner who submitted his report. On the application made by defendant, even Nimtana was carried out. The learned trial Judge, therefore, came to the conclusion that there was no reason to again appoint Court Commissioner to find out whether there is a Bandh or not. For the reasons stated

in paragraph 7, I do not find that any case is made out at all. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)