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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3844 OF 2014

Bhagwant Laxman Solankar ... Petitioner

Vs.

Smt.Shantabai Tukaram Solankar and others ... Respondents

Mr.P .P. Goyal, Advocate for the Petitioner.

Mr. S. S.Umbarje, Advocate for Respondent No.1.

CORAM : R.G.KETKAR, J.

DATE : 04th JANUARY, 2016

P.C. :

. Heard Mr.P. P. Goyal, learned Counsel for the petitioner and Mr. S. S.Umbarje, learned Counsel for respondent No.1

2. By this Petition under Article 227 of the Constitution of India, original defendant No.1 has challenged the judgment and order dated 13/02/2014 passed by the learned Joint Civil Judge, Junior Division, Solapur below Exhibit 51 in Regular Civil Suit No. 88 of 2009. By that order, the learned trial Judge allowed the application made by the respondents No.1 to 4, hereinafter referred to as plaintiffs, under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for appointment of the Court Commissioner. Mr.Goyal submitted that the plaintiffs instituted Suit for declaration that the sale deed dated 06/09/1991 executed by respondent No.5,

hereinafter referred to as defendant No.2, in favour of petitioner, hereinafter referred to as defendant No.1, is null and void; for direction to defendant No.2 to re-deliver along with costs of renovation of the doors and/or windows damaged by defendant No.1; for perpetual injunction restraining defendant No.1 from obstructing the plaintiffs from using the suit house. During the pendency of the Suit, plaintiffs took out application Exhibit 51 on 11/07/2013 for appointment of the Court Commissioner for inspection of damages caused to the suit house by defendant No.1. Defendant No.1 filed reply at Exhibit 56 on 30/07/2013. By the impugned order, the learned trial Judge has allowed the application.

3. Mr.Umbarje submitted that in pursuance of the impugned order, the Commissioner has carried out spot inspection and submitted report dated 28/10/2015. He, therefore, submitted that the Petition is rendered infructuous as the impugned order is worked out.

4. As noted earlier, the impugned order is passed on 13/02/2014 and the Petition is instituted on 12/03/2014. However, the impugned order was not stayed by this Court. It appears that the Commissioner has also carried out spot inspection and submitted the report. In view thereof, I do not find that any case is made out at this stage to interfere with the impugned order. It is, however, open to defendant No.1 to file objections, if not already filed, if so advised.

Subject to this, Petition fails and the same is rejected. 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.)