

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12478 OF 2015

Dattu Bala Bambugade ... Petitioner
Vs.
Sitabai Sakharam Bambugade ... Respondent

Mr. Balkrishna G. Tangsali for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 15, 2016

P.C. :

Heard Mr. Tangsali, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff-appellant in the District Court has challenged the judgment and order dated 03.07.2015 passed by the learned Principal District Judge, Kolhapur below exhibit-19 in Regular Civil Appeal No.319 of 2011. By that order, the learned District Judge rejected the application made by the appellant-plaintiff for appointment of Taluka Inspector of Land Records (TILR), Bhudargad as the Court Commissioner for carrying out measurements of the suit lands and the Grampanchayat property No.85 situate at Village Besavade, Taluka Bhudargad.

3. Mr. Tangsali strenuously contended that plaintiff has instituted Suit for declaration of his ownership as also possession and for perpetual injunction restraining the defendant from carrying out any construction by encroaching upon the suit property as also for mandatory injunction directing the defendant to remove the unauthorized construction carried out by her and for possession of that portion. The learned trial Judge partly decreed the Suit and declared that

plaintiff is the owner and possessor of the suit land. The Suit for perpetual and mandatory injunction was dismissed. Aggrieved by that decision, plaintiff preferred appeal before the District Court and during the pendency of the Appeal, applied for appointment of the Court Commissioner under Order 26, Rule 9 of the Code of Civil Procedure, 1908. By the impugned order, the learned District Judge has rejected the application. Mr. Tangsali submitted that for the reasons stated in the application at exhibit-19, it is absolutely necessary to appoint Court Commissioner for bringing the factual position on record.

4. I have considered the submissions advanced by Mr. Tangsali. I have also perused the material on record. Paragraph 4 of the impugned order records that during the pendency of the Suit, Court Commissioners were appointed on four occasions. The Court Commissioners carried out the work and the reports were filed. Reports of all the three surveyors in the nature of measurement maps are also on record. In the presence of the parties, commission work was carried out. For the reasons stated in paragraphs 4 and 5 of the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

5. However, it is made clear that where a decree is challenged 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 proposed proceedings as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)