

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4081 OF 2016

Shri. Chandrakant Nanasaheb Kadam ...Petitioner
Versus
Executive Engineer, Construction Department
And Anr. ...Respondents

....
Mr.Sachin B. Thorat, Advocate for the Petitioner.
Ms.M.S. Bane, AGP for the Respondents.
....

CORAM : R. G. KETKAR, J.

DATE : 29th NOVEMBER, 2016

P.C.

1. Heard Mr.Sachin Thorat, learned Counsel for the petitioner and Ms.M.S. Bane, learned A.G.P. for the respondents, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the judgment and order dated 14.1.2016 passed by the learned Jt. Civil Judge, Senior Division, Khed-Rajgurunagar below Exhibit-56 in R.C.S. No.243/2014. By that order, the learned trial Judge rejected the application made by the plaintiff

for appointment of Deputy Superintendent of Land Records to measure the land bearing Gat Nos.95, 96 and 100.

3. In support of this Petition, Mr. Chavan invited my attention to paragraph-9A. In paragraph-9A, the plaintiff asserted that in the written statement, the defendants contended that patra shed is situate in Gat No.100 and not in the suit property. The plaintiff therefore got the land bearing Gat Nos.95 and 96 measured through the Deputy Superintendent of Land Records, Junnar. The lands bearing Gat Nos.95 and 96 were measured on 27.1.2014 and the boundaries were fixed. The measurement register No.4269/2013 and the map bearing measurement No.4269/2013 was given to the plaintiff which clearly show that patra shed is situate in Gat No.96. He submitted that the defendants have made encroachment in the property of the plaintiff and, therefore, it is necessary to appoint the Court Commissioner.

4. On the other hand, Ms.Bane supported the impugned order.

5. I have considered the rival submissions advanced by

learned Counsel appearing for the parties. I have also perused the material on record. The plaintiff has prayed for perpetual injunction restraining the defendants from obstructing his possession. The plaintiff has also claimed possession of portion occupied by unauthorized construction made by the defendants in the suit property. In other words, the plaintiff specifically came with the case that the defendants have carried out unauthorized construction in the suit property. In other words, there is no dispute as regards recovery of possession of the encroached portion. In paragraph-9A, the plaintiff also asserted that the measurement is carried out on 27.1.2014 by the Deputy Superintendent of Land Records, Junnar. While rejecting the application, the learned trial Judge has observed that the plaintiffs application was rejected on 4.12.2014. As the plaintiff has carried out measurement of the suit property, he has to prove the case by adducing this.

6. For the reasons recorded in paragraph-5 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. The learned trial Judge rightly held that the Court Commissioner cannot be appointed to collect the evidence. It will be however open to the

plaintiff to examine Deputy Superintendent of Land Record who has carried out measurement on 27.1.2014. Hence, the Petition fails and the same is dismissed.

7. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)