

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4543 OF 2016**

1. Shri Suresh Keshav Nevaskar
(Koli) and Anr

Petitioners

Vs

Shri Ashanna Antappa Nagarkan
and Ors.

.. Respondents

Mr. Siddhartha R. Ronghe, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 16/04/2016

PC:

1. Heard Mr. Siddhartha Ronghe, learned counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 2.11.2015 below Exhibit 183 as also the judgment and order dated 20.2.2016 below Exhibit-190 passed by the learned 6th Jt. Civil Judge, Jr. Dn., Pune. By order dated 2.11.2015 below Exhibit-183, the learned trial Judge rejected the application made by the plaintiffs for appointing witness for spot inspection. By order dated 20.2.2016 the learned trial Judge rejected the application made by the plaintiff for appointing Commissioner and/or City Surveyor to physically identify house bearing C.T.S. No. 859 and C.T.S. No. 860 situate at Kasba Peth, Pune and submit report to the Court.

3. Mr. Ronghe has taken me through plaint and written

statement as also prayers made in application Exhibit 190. He submitted that by prayer clause (b), the plaintiff has prayed for appointment of Court Commissioner and/or Surveyor for physically identifying CTS No. 859, which is claimed by the plaintiffs and CTS No. 860, which is claimed by the defendants.

4. It is the case of the plaintiffs that the defendants while executing decree in respect of CTS No.860, Kasba Peth, have executed decree in respect of CTS No. 859 Kasba Peth. The plaintiffs have, therefore, instituted suit for declaration that plaintiffs no.1 and 2 and defendants no. 5 to 7 are owners of CTS No.859, Kasba Peth and for decree of eviction and possession of CTS No.859 in favour of the plaintiffs; for perpetual injunction restraining defendants no. 1 to 3 and 4A to 4C from transferring, alienating, disposing and/or creating interest in CTS No.859. He submitted that for the purpose of identifying the suit property, Court Commissioner can very well be appointed. In support of this submission, he relied upon following decisions:

- (i) Yeshwant Bhaduji Ghuse Vs Vithbaji Laxman Ladekar, 2010 (2) ALL MR 694;
- (ii) Kisanlal Maniklal Rathi Vs Dinkar Yashwant Patil, 2004 (1) Mh.L.J. 138;
- (iii) Fatima gomes Furtado Vs Indirabai Vinayak Lotlikar, 2016(2) Mh.L.J. 905;
- (iv) Vencu gopal Tari Vs Nilconta S. Zete, AIR 1975 Goa, Daman

and Diu 32.

5. I have considered the submissions advanced by Mr. Ronghe. I have also perused the material on record. The learned trial Judge rejected the application on two grounds, namely, on 6.8.2013 application made by the plaintiffs for appointing Court Commissioner for identification of the suit property was rejected. Secondly, in paragraph 3 the learned trial Judge has considered the evidence adduced by the plaintiffs. After considering the evidence adduced by the plaintiffs, the learned trial Judge observed that witnesses examined by the plaintiffs have specifically stated in their evidence four boundaries of the property bearing CTS No. 859 and, therefore, there is no necessity for appointing Court Commissioner for identifying suit property. The learned trial Judge have also observed in paragraph 6 that in the case in hand there is no boundary dispute, there is no encroachment and the plaintiffs have to prove that they are dispossessed by the defendants.

6. Mr. Ronghe relied upon the decisions: (i) Yeshwant Bhaduji Ghuse (supra) (ii) Kisanlal Maniklal Rathi (supra), Fatime Gomes Furtado (supra) and (iv) Vencu Gopal Tari. In the present case, in paragraph 3 of the impugned order, the learned trial Judge has referred to evidence of PW 1. The plaintiffs have moved application Exhibit 175 for issuing witness summons to City Surveyor which was allowed. Accordingly, Santosh Damkale was

examined at Exh.179. During his evidence, he deposed about four boundaries of CTS No.859. He also produced map at Exhibit-181. The plaintiffs have examined Mahendra Bachhav at Exhibit-184 who has also produced map Exhibit 186. Even in his evidence he deposed about four boundaries of CTS No.859. Grievance of the plaintiffs is that the defendants have obtained possession of CTS No.859 while executing decree.

7. As the plaintiffs have already brought evidence on record, I do not find that the learned trial Judge has committed any error in dismissing the application. Reliance placed by Mr. Ronghe does not advance the case of the plaintiffs. In my opinion, by applying for Court Commissioner, the plaintiffs want to collect evidence. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)