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*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 4244 OF 2016

Aslam s/o.Abdul Rehman Chunawala & ors. .. Petitioners
Vs
Haji Makbool Mohemmed Hanif
Kokar Qureshi & ors. .. Respondents

Mr.V.S.Kapse i/b Sameer Bhalekar, for Petitioners.
Mr.Rishi Soni i/b Ashok Purohit & Co., for Respondents.

***CORAM : N.M.Jamdar, J.
Tuesday, 18 October 2016.***

P.C. :

Heard learned counsel for the parties.

2. By the order dated 10 March 2016, the learned City Civil Court Judge, Greater Mumbai has directed joint survey of the land in question and has directed that the City Survey Office and the Development department of Mumbai Municipal Corporation will complete the survey and demarcation and report to the Court.

3. Pursuant to the execution of the decree, possession of the suit property is to be handed over and conveyance is yet to be done in favour of Respondents and therefore, execution proceedings cannot be stated to be finally disposed as on date. Therefore, even though

the learned Judge has stated in the impugned order that execution application is allowed, the proceedings do not come to an end unless actual possession is handed over and the decree is satisfied. Therefore, the impugned order will have to be treated as an interim order in the execution proceedings.

4. By this order all that is being done by the learned Judge is to direct the authorities to carry out a survey and demarcation and submit a report. After the report is submitted the learned Judge will give opportunity to both the sides before acting upon the same and therefore, there is no prejudice likely to be caused to Petitioners. As far as contention of Petitioners that even though the report states otherwise, Respondents – Plaintiffs cannot go beyond the consent terms, is a matter of arguments that can always be advanced by Petitioners when the report will be taken for consideration by the learned Judge. In view of this position, since the order in the interim order only directs a survey and no final decision as regards the report to be submitted is yet taken, it is not necessary to interfere with the impugned order. All contentions of the parties as regards the report that is to be submitted are kept open.

5. The parties will appear before the learned Judge of City Civil Court on 16 November 2016. All parties will cooperate with the learned Judge, for early disposal of the proceedings.

(N.M.Jamdar, J.)