

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

APPEAL FROM ORDER NO. 634 of 2015

1. Mr.Shailaja Devdatt Lele,
R/at Village – Kondhle,
Tal. Wada, Dist. Thane.

2. Mr.Harshal Devdatt Lele,
R/at Village – Kondhle,
Tal. Wada, Dist. Thane.

... Appellants

v/s

1. Mr.Krushnakumar Nilkanth Lele,
2. Mr.Arvind Deshmukh
3. Mr.Manoj Dattatray Chaudhari
All residing at Village – Kondhle,
Tal. Wada, Dist. Thane; & ors.

4. Group Grampanchayat Kondhle
Through Sarpanch, Grampanchayat Kondhle,
Tal. Wada, Dist. Thane.

... Respondents

Mr.Sachin Tigde for the appellants.

Mr.Omkar Nagvekar i/by P.R.Arjunwadkar for Resp.No.1.

Coram: N.M. Jamdar, J.

Dated: 21 July 2016

ORAL JUDGMENT:

By this appeal, the Appellants challenge the judgment and

orders passed by the learned District Judge, Thane, dated 26 March 2015, partly allowing the appeal and remanding the proceedings to the learned Civil Judge, Junior Division, Wada.

2 The Respondents filed a suit bearing No.30 of 2009 seeking relief of declaration, removal of encroachment and injunction. In this suit, it was the case of the Respondent/Plaintiff that the Appellant had encroached on the suit property to the extent of 300 sq.ft. and sought relief of injunction and for possession. The Appellants filed the written statement and contested the suit. The Appellants denied that any encroachment was made by them. The learned Civil Judge, by the judgment and order dated 2 April 2014, primarily relying on statement made by the Respondent/Plaintiff in his deposition, concluded that the Respondent/Plaintiff has failed to prove that any encroachment was made. The appeal was filed by the Respondent/Plaintiff in the District Court, Thane. The learned District Judge came to the conclusion that, in the dispute of this nature it was necessary to appoint the Commissioner to carry out local investigation and prepare a map so that it will assist the Court in deciding the controversy. The learned District Judge relied upon the decision of this Court in the case of *Antonio Gomes alias Antonio Bento Gomes v/s Rosario Salvador Carneiro & ors.*¹, in which this Court, after considering various other decisions, has opined that appointment of the Commissioner in a boundary line dispute should

1 2014(4) Mh.L.J. 366.

generally be made so that it assists the Court in deciding such disputes effectively.

3 Learned counsel for the Appellants submitted that the appointment of the Commissioner was not necessary as the Respondent/Plaintiff has admitted certain positions which will show that there is no encroachment. I have gone through the evidence of the Respondent/Plaintiff. It cannot be stated that the so called admission of the Respondent/Plaintiff is unequivocal so as to dismiss the entire suit on the basis of this statement. The evidence of the Respondent/Plaintiff will have to be considered in toto. Therefore the conclusion reached by the learned District Judge that appointment of the Court Commissioner in the present facts of present case was required, cannot be faulted. The order passed by the learned District Judge is in consonance with the law laid down by this Court. There is no error in the order passed by the learned District Judge so as to warrant interfere in the appeal. Both the parties will get an opportunity to contest the report of the Commissioner.

4 The learned District Judge has already directed that the trial be completed within a period of six months. The learned Civil Judge will complete the trial within a period of six months from the date the writ of this Court reaches it.

5 The Appeal from order is dismissed.

6 Registry to communicate the order forthwith.

7 All contentions of the parties on merits, are kept open to be decided in the suit.

(N. M. Jamdar, J.)