

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7193 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Niranjan Mogre i/b. Sujay H. Gangal, Advocate for Petitioner.

Ms.Teja Katdare, Advocate for Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.

DATE : 18/11/2016

P C.:

1. Not on board. At the request of Mr.Mogre, taken up for admission.

2. Heard Mr.Niranjan Mogre, learned Counsel for the petitioner and Ms.Teja Katdare, learned Counsel for the respondents No.1 to 3, at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant', has challenged the judgment and order dated 23.3.2016 passed by the learned Civil Judge, Junior Division, Roha below Exhibit-24 in Regular Civil Suit No.76/2013. By that order, the learned trial Judge allowed the application Exhibit-24 made by the respondents, hereinafter referred to as the 'plaintiffs', and appointed the Deputy Superintendent of Land Records, Roha as Court Commissioner for submitting report along

with the map.

4. In support of this Petition, Mr.Mogre strenuously contended that the learned trial Judge was not justified in appointing Court Commissioner. In fact, the suit property is not in existence. He also relied upon Section 36-B of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 to contend that instead of appointing Deputy Superintendent of Land Records, Roha as Court Commissioner, the trial Court should have appointed the Consolidation Officer, namely, the Superintendent of Land Records, Raigad. He invited my attention to clause (4) of the operative part of impugned order. By that clause, the learned trial Judge permitted the plaintiffs herein to submit certified / true copies of the revenue record or any other documents on which they are relying. He submitted that such an opportunity is not given to the defendant.

5. On the other hand, Ms.Katdare supported the impugned order. She invited my attention to the prayers made in the suit. She submitted that the suit is for recovery of possession of the encroached area by the defendant and, therefore, the learned trial Judge was justified in appointing Deputy Superintendent of Land Records, Roha as Court Commissioner.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of record shows

that the plaintiffs had sought possession of encroached portion. In that context, the learned trial Judge has appointed the Deputy Superintendent of Land Records, Roha as a Court Commissioner. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. It is however necessary to permit the defendant to produce certified /true copies of the revenue records on which they are relying before the Court Commissioner. The Court Commissioner will take into consideration the documents produced by the plaintiffs as also the defendant and thereafter carry out the work as per the impugned order. Subject to this, the Petition fails and the same is dismissed.

7. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Code of Civil Procedure, 1908 .

8. All the parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)