

Sequeira

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

WRIT PETITION NO. 10197 OF 2016

Prabhakar Karabhari Gholap

... Petitioner

Vs

Bhika Gahinaji Navale & ors.

... Respondents.

Mr. Rajesh Datar, for the Petitioner.

None for Respondents.

***CORAM : N.M. Jamdar, J.
Friday, 16 September 2016.***

P.C. :

The Petitioner has challenged two orders by way of this Petition. Firstly, the order under Exhibit 139 and secondly, the order passed below Exhibit 141 in Regular Civil Suit No.132 of 2001.

2. The Petitioner filed this suit seeking possession of the portion of the lands stated to be encroached by Respondents-Defendants. The suit was dismissed by the learned Civil Judge, Junior Division, Chandwad by Judgment and Decree dated 22 May 2013. Regular Civil Appeal No.147 of 2013 was filed by the Petitioner in the District Court, Niphad. The learned District Judge, partly allowed the appeal and remanded the civil suit to the learned Civil Judge, in light of the report of the Taluka Inspector of Land Records who was appointed during the pendency of the appeal. After the suit was so

remanded the Petitioner filed an application below Exhibit 139 for amendment of the plaint to add certain parties as Defendants on the ground that they have committed encroachment and secondly, for appointment of a Court Commissioner to measure the land vide Exhibit 141.

3. As regards the order passed below Exhibit 139 regarding addition of parties is concerned, what is sought to be incorporated is a completely different cause of action in respect of different parties who are stated to have committed encroachment. The learned Judge has rightly held that it is not possible to grant amendment which will completely change the nature of the dispute as no connection has been shown between the Defendants and the added Respondents. It is always open to the Petitioner to institute substantive proceedings against the persons who are stated to have encroached on the suit land. Since that right of the Petitioner is always open, the Petitioner is not prejudiced by the order passed below Exhibit 139.

4. As regards the order below Exhibit 141 for appointment of Commissioner is concerned, learned counsel for the Petitioner submitted that the learned District Judge has not foreclosed the request for appointment of another Commissioner and the Respondents also do not have objection for appointment of Commissioner and they had only stated that some other land should also be included. He submitted that to adjudicate the dispute

effectively, Commissioner be appointed. It is not possible to accept the submission. The order passed by the learned District Judge remanding the matter, which is not challenged by either of the parties is specific. Since TILR was appointed during the pendency of the appeal and report was placed on record, the proceedings were remanded to the trial Court only to consider the report. The Petitioner had failed in the first round before the learned Civil Judge. Since the learned Civil Judge is bound by the limited remand, even if the parties consent without setting aside the order that binds Civil Judge, the learned Civil Judge will not be able to travel beyond the scope of remand. It is open to the Petitioner to advance all such arguments which are kept open in the order dated 24 November 2015 passed by the learned District Judge. In the circumstances no error can be found in the order passed by the learned Civil Judge below Exhibit 141.

5. The Writ Petition is rejected.

(N.M.Jamdar, J.)