

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

WRIT PETITION NO. 10351 OF 2015

M/s. Arihant Construction Company & Anr. Petitioners
Versus
Jagdish Joshi Respondent

Mr. Atul Daga a/w Suraj Iyer I/b Ganesh & Co. for Petitioners.
Mr. Jagdish Joshi, Respondent in person present in the Court.

***CORAM : N. M. Jamdar J.
Thursday 13 October 2016***

ORAL ORDER

. By an order dated 23 August 2016 the parties were put to notice that the petition will be taken up for final disposal.

2. Heard both the sides.

3. By the impugned order dated 25 March 2015, the learned City Civil Court Judge has rejected the Notice of Motion taken out by the petitioners for appointment of City Survey Officer as a Court Commissioner.

4. The suit is filed by the petitioners, who are the plaintiffs with an allegation that the respondent/defendant has encroached upon the suit property. It is in this suit that appointment of a Court

Commissioner is sought. The learned City Civil Court Judge has held that since the plaintiffs have measured the plot before filing the suit and evidence cannot be collected by the petitioners/plaintiffs, it is not necessary to appoint any Court Commissioner. The approach of the learned City Civil Court Judge is not correct. In the cases of Haryana Waqf Board V/s Shanti Sarup and others (2008) 8 Supreme Court Cases 671; Habibkhan Inauttalakhan & Ors. V/s Waman Govind Rathod & Ors. 2012 (6) Bom.C.R.379; Kolhapuri Bandu Lakade V/s Yallappa Chinappa Lakade, Decd. Thru' Pooja @ Poojari Y. Lakade & Ors. 2011 (3) Bom.C.R.807; Yeshwant Bhaduji Ghuse V/s Vithobaji Laxman Ladekar 2010(3) Bom.C.R. 373; Girish Vasantrao Bhoyar and another V/s Nimbaji Warluji Bambal 2009 (4) Mh.L.J. 371; Kashinath Ramkrishna Chopade V/s Purushottam Tulshiram Tekade & others 2005(6) Bom.C.R. 267; Ushabai w/o Sharadchandra Bannore V/s Wasudeo s/o Baliramji Mehare and others 2004(2) Mh.L.J. 594; and Tajmulhussain s/o Mulla Mumtaz Hussain V/s Satish Bhanudas Chavan 1994(3) Bom.C.R. 317, it has been held that in the cases of boundary disputes and allegations of encroachment, it is always desirable to get the area measured by a Surveyor. The respondent, who appears in person states that he is not oppose to the appointment of Court Commissioner, but the basis for which the measurement is carried out and which area is measured must be specified.

5. Considering this position, the Writ Petition is disposed of by quashing and setting aside the order dated 25 March 2015 and restoring the Notice of Motion No. 2965 of 2013. The learned City Civil Court Judge will appoint the City Survey Officer as a Court Commissioner. The basis for measurement to be carried out and the parameters of such measurement will be fixed by the learned City Civil Court Judge after hearing both the sides.

6. The Writ Petition is accordingly disposed of in above terms.

(N. M. Jamdar, J.)