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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10941 OF 2015

Yashwant Baburao Jadhav

.. Petitioner

Vs.

Dhondiram Vithal Savant and others

.. Respondents

Mr. Ramdas Shelke, Advocate for the Petitioner.

CORAM : R.G.KETKAR, J.
DATED : 11th JANUARY, 2016

P.C. :

. Not on board. At the request of Mr.Shelke, taken up for admission. Heard Mr. Ramdas Shelke, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 12/06/2015 passed by the learned Joint Civil Judge, Junior Division, Palus below Exhibit 75 in Regular Civil Suit No. 25 of 2009. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as plaintiff, for appointing the District Superintendent of Land Records, Sangli as Court Commissioner for submitting report in respect of Gat Nos. 518 & 515.

3. Mr.Shelke submitted that there are contradictory maps

produced on record and in order to resolve the controversy between the parties, it is absolutely necessary to appoint Court Commissioner. He further invited my attention to paragraph 1B of the plaint and submitted that defendant No.1 has committed encroachment to the extent of 0.2 R from the eastern side of Gat No.518 belonging to plaintiff. He has taken me through maps. He invited my attention to maps produced by the plaintiff as also defendant No.1 and submitted that having regard to the contradictory nature of the maps produced by the parties, it is absolutely necessary to appoint Taluka Inspector of Land Records for holding enquiry and submitting report along with maps.

4. I have considered the submissions advanced by Mr.Shelke. I have also perused the material on record. In paragraph 4 of the impugned order, the learned trial Judge recorded that the plaintiff has examined himself as also P.W.2 - the Cadastral Surveyor to prove the encroachment and closed his evidence vide purshis Exhibit 58. The defendants have filed affidavit in lieu of examination-in-chief. The plaintiff filed application Exhibit 71 and prayed for joint measurement of Gat Nos. 518 & 515. That application was rejected on 13/02/2015. In paragraph 5, it was noted that on 23/09/2010, officer from the Land Records carried out measurement of Gat No. 515 and the concerned officer has shown boundaries of adjacent land owners. Though the defendant filed

certified copy of the report of the Deputy Inspector of Land Records, Palus, dated 30/09/2010 showing that Gat No. 515 was remeasured and 4 boundaries of the said Gat was also shown, the plaintiff did not make any grievance in respect of the measurement carried out in the year 2010. The defendant also filed map of re-measurement carried out in the year 2013.

5. In paragraph 6, the learned trial Judge noted that plaintiff himself has filed map prepared by Cadastral Surveyor and also examined him as his witness. Earlier also, application at Exhibit 71 for similar relief was filed which was rejected on 13/02/2015. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)