

3. Mr. Malpathak invited my attention to the description of the property given in para 1 of the plaint and in particular southern boundary of the City Survey No.1013. He submitted that to the south side of City Survey No.1013, open plot belonging to the defendant is situated.

4. Mr. Malpathak invited my attention to the written statement filed by the defendant wherein it is asserted that City Survey No.1013 is situated behind Belapur Police Station about ½ kms away from the plot of the defendant. In para 11 of the written statement, it is further contended that City Survey No.1013 is not adjacent or even near to Survey No.416-A Hissa No.15 owned by the defendant. Mr. Malpathak submitted that as there is a boundary dispute between the parties, it is necessary to appoint Survey Officer for locating the City Survey No.1013 so as to submit report along with the map and such other particulars. By the impugned order, the learned Trial Judge, however, rejected the application on the ground that perusal of the documentary evidence, along with the oral evidence of the witness of the plaintiff, *prima-facie*, there is sufficient material on record to ascertain the location and boundary of the suit property.

5. I have considered the submissions advanced by Mr.Malpathak. I have also perused the material on record. Perusal of the plaint shows that the plaintiff has sought declaration that the acts of the defendant to forcefully get vacated the suit plot are illegal; for

perpetual injunction restraining the defendant from disturbing peaceful possession of the plaintiff on the suit property. In other words, the suit does not raise any boundary dispute as also the plaintiff does not seek recovery or possession of the encroached portion from the defendant. While rejecting the application, the learned Trial Judge has observed that the defendant has every opportunity to lead evidence at proper stage of the suit. The learned Trial Judge also found that it is not necessary to order local investigation in respect of the suit property. The defendant is trying to collect the evidence by taking help of the Court.

6. Having regard to the prayers made by the plaintiff in the suit, as also the defence taken by the defendant, I do not find that the learned Trial Judge has committed any error in rejecting the application. Hence the petition fails and the same is dismissed.

7. It is made clear that where a decree is challenged 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 the proposed proceedings, as contended by Section 105(1) of the Civil Procedure Code, 1908.

(R. G. KETKAR, J.)