

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13223 OF 2016

Shri. Vijay Gaurishankar Sharma

...Petitioner

Versus

Shri. Balkrushna Karbhari Sanap
And Anr.

...Respondents

....

Mr.Milind M. Sathaye, Advocate for the Petitioner.

Mr.Shivshankar D. Patil, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 19th DECEMBER, 2016

P.C.

1. Heard Mr. Milind M. Sathaye, learned Counsel for the petitioner and Mr. Shivshankar Patil, learned Counsel for respondent No.1, at length.

2. Mr. Sathaye seeks leave to delete respondent No.2 on the ground that respondent No.1 being the original defendant No.1 is the contesting respondent. On the oral application made by Mr.Sathaye, leave to delete respondent No.2 is granted. Amendment shall be carried out forthwith.

3. Rule. Mr. Patil waives service. Having regard to the short controversy raised in this Petition as also at the

request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 27.10.2016 passed by the learned Ad-hoc District Judge-1, Nashik in Misc.Civil Appeal No.111/2016. By that order, the learned District Judge allowed the appeal preferred by respondent No.1, hereinafter referred to as 'defendant No.1', and quashed and set aside the judgment and order dated 24.9.2016 passed by the learned Civil Judge, Junior Division, Igatpuri below Exhibit-5 in R.C.S. No.39/2016. The learned District Judge directed the trial Court to expedite the suit and decide at an early stage.

5. Mr. Sathaye has taken me through the written statement filed by defendant No.1 and in particular paragraphs-9 & 10 thereof. He has also invited my attention to the deposition of defendant No.1 and in

particular paragraph-7 of the cross-examination to contend that defendant No.1 admitted that the suit property described in paragraph-1C of the plaint is not shown in the sanctioned plan. He submitted that the learned trial Judge has considered various sale deeds as also the measurement map dated 20.9.1995 and the sanctioned plan of defendant No.1 at Exhibit-26/4. As against this, the learned District Judge has allowed the appeal by giving reasons only in paragraph-9. In short, he submitted that the learned District Judge has not considered the material on record.

6. Mr. Patil has supported the impugned order. He submitted that defendant No.1 has specifically pleaded that he is not carrying out any construction in the suit property described in paragraph-1C of the plaint and he is carrying out construction only in his property described in paragraph-1B and as per sanctioned plan at Exhibit-26/4. He further states that Mr.Sanjay Balkrishna Sanap, son and general power of attorney of defendant No.1 is present in the Court. He has tendered photocopy of PAN card,

which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Patil states that by consent the impugned order may be set aside and the Appellate Court may be directed to dispose of the appeal in a time bound manner. In view thereof, by consent of parties, the Petition is disposed of in the following terms :

- [i] Impugned order dated 27.10.2016 is set aside. Misc. Civil Appeal No.111/2016 is restored to the file of learned District Judge.
- [ii] Parties agree that they will appear before the learned District Judge on 4.1.2017 and for that purpose no fresh notice be issued to them.
- [iii] The learned District Judge is requested to decide the appeal after considering the material on record within four weeks from the date of appearance of the parties.
- [iv] All contentions of the parties on merits are expressly kept open.
- [v] Rule is made absolute in aforesaid terms with

no order as to costs.

- [vi] In view thereof, as the impugned order is set aside, the order of the trial Court dated 24.9.2016 stands revived and shall operate during pendency of the appeal.
- [vii] All parties, including the Appellate Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)