

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1244 OF 2016
(Shahaji Balvant Salunke Vs. Bibrao Atmaram Salunke and others)

Mr.R.S.Patil, Advocate for the petitioner.
Mr.S.S.Choudhary, Advocate for respondent Nos.1A, 1B, 4C, 5D.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2017

PER COURT :

1. While issuing notice on 04/02/2016, this Court has observed in its order in paragraph Nos. 1, 2 and 3 as under :-

“1. Learned counsel for the petitioner submits that the respondents-plaintiffs preferred Regular Civil Appeal No. 209 of 2007 before the District Court, Osmanabad against the judgment and decree passed in R.C.S. No. 103 of 2003. The learned Principal District Judge, Osmanabad by judgment and order dated 16.10.2012 set aside the judgment and decree passed by the trial court and remanded the matter to the trial court for fresh trial with certain directions, including direction to appoint T.I.L.R. as Court Commissioner at the equal cost of both the parties, with specific direction thereafter to the Court Commissioner. Learned counsel further submits that T.I.L.R. has submitted report Exh.132 alongwith the map. Learned counsel

submits that from the report and the map it is revealed that the T.I.L.R. appointed as Court Commissioner has not complied with the directions given by the Principal District Judge, Osmanabad in the remand order dated 16.10.2012 in R.C.A. No. 209 of 2007. The petitioner-defendant has filed an application Exh.134 and tried to point out the trial court about the said deficiencies. However, the trial court has erroneously rejected the said application by order dated 3.9.2015.

2. In view of this, issue notice to the respondents-plaintiffs returnable on 2.3.2016.

3. Till the next date of hearing, further proceedings in R.C.S. No. 103 of 2003 are hereby stayed."

2. I have heard the learned Advocates for the respective sides at length.

3. The strenuous contention of the petitioner is that the directions issued by the learned Principal District Judge, Osmanabad in judgment dated 16/10/2012 in RCA No.209/2007 have not been complied with. It is in the backdrop of these contentions that I have

considered the submissions of the learned Advocates.

4. It is undisputed that the learned Principal District Judge had directed the Trial Court to appoint the TILR himself as the Court Commissioner as Nimtanadar. Further directions have been issued in so far as the documents to be considered and the manner of conducting the inspection and measurement. The same TILR is directed to submit his map and report regarding the execution of the Commission.

5. From the purported report dated 31/12/2014, it appears that the Deputy Director of Land Records, Tuljapur has submitted his report alongwith the map. However, he had appointed Mr. S.D.Barad as the Nimtanadar to conduct the work of the Court Commissioner. Prima facie, this aspect appears to be in opposition to the direction given by the Appeal Court of appointing the TILR himself as the Court Commissioner. Nevertheless, this aspect was not adequately highlighted by the petitioner before the Trial Court in his application Exhibit 134 which has been rejected by the impugned order dated 03/09/2015.

6. It needs mention that notwithstanding whether the petitioner

has sufficiently highlighted the non-compliance of the directions of the Appeal Court, the learned Trial Judge, while considering the application Exh.134, should have assessed whether all the directions of the Appeal Court were duly complied with by the TILR.

7. In the light of the above, this petition is partly allowed. The impugned order dated 03/09/2015 is set aside and the petitioner is granted the liberty to file a fresh application to point out to the Trial Court which directions of the Appeal Court dated 16/10/2012 have not been complied with by the TILR.

8. Considering the above, application Exh.134 is disposed of. The petitioner shall therefore file an application within 3 (three) weeks from today. Since the respondents contend that the petitioner is delaying the matter, the respondents would have the liberty to file their reply to the said application within 2 (two) weeks from the date of filing. The Trial Court shall consider the said application on its own merits and in the light of the observations of this Court set out in this order, within a period of 4 (four) weeks from the date of filing of the say and after hearing the learned Advocates for the respective sides.

(Ravindra V.Ghuge, J.)