

Anand

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

WRIT PETITION NO.1501 OF 2017

Balwant Bapuso Chavhan (since deceased) .Petitioners
through Lrs and Ors.

Vs.

Smt. Indutai Shrirang Gurav & anr. .Respondents

Mr.S.S.Kanetkar, Advocate, for the Petitioners

CORAM : R.G.KETKAR, J.

DATE : 09.03.2017

P.C.

. Not on board. At the request of Mr. Kanetkar, taken up in
the production board.

2. Heard Mr. Kanetkar, learned counsel for the Petitioners.

3. By this Petition under Article 227 of the constitution of India, the Petitioners, hereinafter referred to as 'Defendants' have challenged the Judgment and Order dated 29.06.2016 passed by the learned 5th Jt.C.J.J.D., Karad below Exh.67 in R.C.S.No.89 of 2010. By that order, the learned trial Judge allowed the Application made by the Respondent No.1, hereinafter referred to as 'Plaintiff' and permitted her

to examine Court Commissioner as her first witness before examining the Plaintiff as witness.

4. In support of this Petition, Mr. Kanetkar submitted that the Plaintiff filed an Application Exh.67 contending that earlier in B.N.D.Case No.30 of 2007 and 31 of 2007, a measurement and nimtana measurement were carried out. The Plaintiff has produced maps in those proceedings. He submitted that aggrieved by the Order passed by the Tahsildar, the Defendants preferred an Appeal before the Additional Collector, Satara. The Additional Collector, Satara allowed the Defendants' Appeal and set aside the Tahsildar's Order. Aggrieved by that Order, the Plaintiffs preferred a Revision Application before the Commissioner which was allowed. Aggrieved by the decision of the Commissioner, the Defendants have preferred a Revision Application before the Revenue Minister, State of Maharashtra and same is pending. He submitted that in the event of Defendants succeeding before the State Government, the Tahsildar's Order as also maps cannot be relied by the Plaintiffs and in that event, the entire exercise of examining the Commissioner as Plaintiff's witness will be futile. Even otherwise, the learned trial Judge has not properly exercised the discretion while allowing the Application made by the Plaintiff. He has taken me through

the impugned Order. He submitted that the impugned Order deserves to be quashed & set aside.

5. I have considered the submissions advanced by Mr. Kanetkar. I have also perused the material on record.

6. Order XVIII, Rule 3-A of the CPC reads thus :-

“3-A. Party to appear before other witnesses.- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

7. A perusal of the provisions shows that it is within the discretion of the trial Court and for the reasons to be recorded to permit any other witness before a party examining itself as a witness. The learned trial judge observed that the suit is instituted by the Plaintiff for recovery of possession/encroached portion as also for injunction. As there is an allegation of encroachment by the Defendants over the suit property, it would be proper for the Plaintiff to examine the Court Commissioner as her first witness before examining herself. For the reasons recorded in paragraph 6 of the impugned Order, I do not find

that the learned trial Judge has committed any error in passing the impugned Order. Hence, the Petition fails and same is dismissed.

8. 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 proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)