

Anand

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

WRIT PETITION NO.1387 OF 2017

Dhondiram Shrirang Bhosle .Petitioner

Vs.

Babasaheb Hariba Bhosle & ors. .Respondents

Mr.Datta Mane, Advocate, for the Petitioner
Mr.Nagesh Chavan, Advocate, for the Respondent No.1

CORAM : R.G.KETKAR, J.

DATE : 10.03.2017

P.C.

. Heard Mr. Mane, learned counsel for the Petitioner and Mr. Chavan, learned counsel for the Respondent.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 15.12.2016 passed by the learned C.J.J.D., Atpadi below Exh.66 in R.C.S.No.37 of 2016. By that order, the learned trial Judge rejected the Application made by the Plaintiff for appointing Taluka Inspector Land Records (T.I.L.R.) as a Court Commissioner. While rejecting the Application, the learned trial Judge noted that earlier the Plaintiff had filed an Application Exh.31 for

appointment of an Advocate as Court Commissioner. By Order dated 17.03.2016, that Application was rejected. Defendant No.1, thereafter, filed the Application Exh.57 for appointing T.I.L.R. as Court Commissioner. The Plaintiff opposed that Application on the ground that the Defendant No.1 is trying to collect the evidence with the help of the Court. By Order dated 20.09.2016, the learned trial Judge rejected the Application made by the Defendant No.1. The Plaintiff has now filed the present Application. For the reasons recorded in paragraph 3, the learned trial Judge rejected the Application.

3. Mr.Mane invited my attention to the Order dated 31.03.2016 passed by the learned C.J.J.D., Atpadi below Exh.5 and in particular, paragraph 7 thereof. He submitted that the learned trial Judge allowed the Application and issued injunction restraining Defendant No.1 from carrying out any construction over the suit property described in the plaint till the final disposal of the suit. He submitted that prima facie, the learned trial Judge, after perusing photographs produced by the Plaintiff and the Defendant No.1 observed that the Defendant No.1 has raised construction to the South-West corner over another adjoining wall. He, therefore, submitted that having regard to the prayers made in the suit namely recovery of possession of the

encroached area by the Defendant No.1, this is a fit case for appointment of Court Commissioner. On the other hand, Mr. Chavan supported the impugned Order.

4. As noted earlier, the Application filed by the Plaintiff for appointment of Court Commissioner was rejected. Defendant No.1 filed an Application for appointment of T.I.L.R. As Court Commissioner that too was also rejected. The learned trial Judge has considered this aspect in paragraph 3. The learned trial Judge observed that if at all, the Defendant No.1 has committed any encroachment in the Plaintiff's property, the Plaintiff would not have opposed the Application of Defendant No.1 for appointing T.I.L.R. as Court Commissioner. The Plaintiff is trying to collect the evidence with the machinery of the Court and for that purpose, the Commissioner cannot be appointed.

5. In view thereof, for the reasons recorded in paragraph 3, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and same is dismissed. 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.)