

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

WRIT PETITION NO. 4467 OF 2014

Smt. Taibai Ramnath Mohite & anr. ... Petitioners.
Versus
Joma Gomaji Mohite & anr. ... Respondents.

Mr. Uday P. Warunjikar, advocate for petitioners.

Ms. Aparna D. Vhatkar i/b. Mr. Rahul Thakur, advocate for respondents.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 20, 2017**

P.C.:

1 Heard the learned Counsel for the petitioners and learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner No. 1 herein happens to be the original defendant No. 1 in Regular Civil Suit No. 67 of 2007 pending before

the Civil Judge, J.D. at Uran. The suit was filed for removal of encroachment made by the defendant and it was also filed for seeking declaration and injunction against the defendants. The defendant No. 1 had filed written statement contending therein that the property was always owned by the defendants and that it was an ancestral property. It was also vehemently contended by the defendant No. 1 that the defendant is residing in Gram Panchayat Veshvi Extract No. 468 and that the plaintiffs in no way are concerned with the property. It is also submitted that the said property No. 468 is a temporary structure and not a concrete house.

4 The Plaintiffs had filed an application below Order 26 Rule 9 seeking an appointment of Court Commissioner. The said application dated 17/12/2008 was not pressed on 30/1/2009. However, subsequently an application was filed seeking similar relief on 30/12/2013 and the said application was allowed by an order dated 21/1/2014 thereby appointing the Court Commissioner. The learned Judge in the impugned order has specifically held that in order to

resolve the dispute about the encroachment it would be necessary in the interest of justice and to arrive at a just decision, to appoint Court Commissioner to assist the Court and therefore, the application was allowed. The said order is impugned by filing the present writ petition on 25/3/2014.

5 During the pendency of this petition, the respondent No. 2 had expired. Legal heirs were brought on record and by an order dated 10/3/2015 further proceedings in RCS No. 67 of 2007 were stayed.

6 Learned Counsel for the respondent No. 1 Mr. Thakur has filed his appearance on behalf of the respondent No. 1 and had submitted that he would file his appearance on behalf of the respondent Nos. 2 (a) to 2(c). The application seeking relief of bringing legal heirs on record was allowed after the learned Counsel for the respondent had agreed for the same. It appears that the order staying proceedings was passed more than one year after the Court Commissioner was

appointed and in all probabilities the Court Commissioner had submitted his report.

7 In any case, this Court is of the opinion that the learned Civil Judge, J.D. Uran had appointed Court Commissioner only to assist the court and assess the factual position. In view of this, the order dated 21/1/2014 calls for no interference at this stage after almost 4 years. The suit is 10 years old and hence, it would be necessary to expedite the suit. The learned Civil Judge, J.D., Uran to proceed with the further stages in RCS No. 67 of 2007 without being prejudiced by the Commissioner's report and shall also permit the parties to lead evidence independently to contest the Commissioner's report in case it is necessary. The Rule is discharged in view of the above directions.

8 Office to communicate this order to the concerned court which is seized with R.C.S. No. 67 of 2007 forthwith. Learned Civil Judge J.D., Uran is further requested to make endeavour to conclude

further proceedings within 9 months of the date of receipt of this order.

9 Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)