

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1350 OF 2017

Amardeep Jaysing Shetake ... Petitioner
Vs.
Hemant Anantrao Kaulavkar and others ... Respondents

Mr. Rahul P. Walvekar for Petitioner.
Mr. Chetan G. Patil for Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 03, 2017

P.C. :

Not on Board. At the request of Mr. Walvekar, taken up for admission.

2. Heard Mr. Walvekar, learned Counsel for petitioner and Mr. Patil, learned Counsel for respondents No.1 to 3 at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.4', has challenged the judgment and order dated 16.12.2015 passed by the learned Joint Civil Judge, Junior Division, Kagal below exhibits-46 and 47 in Regular Civil Suit No.155 of 2014. By that order, the learned trial Judge rejected the application exhibit-46 filed by the defendant No.1 as also exhibit-47 filed by defendant No.4 for carrying out *Nimtana* measurement.

4. Mr. Walvekar submitted that plaintiffs have instituted Suit for removal of encroachment. Pending the Suit, application exhibit-11 was filed for appointment of Deputy Superintendent of Land Records, Kagal as a Court Commissioner. By order dated 16.09.2014, trial Court allowed the application exhibit-11 and appointed Taluka Inspector of Land Records (T.I.L.R.) as a Court Commissioner. Defendant No.1 thereafter filed application exhibit-46. Defendant No.4 filed application

at exhibit-47 for *Nimtana* measurement. By the impugned order, the learned trial Judge has rejected the applications. It is against this decision, defendant No.4 has instituted the present Petition.

5. In support of this Petition, Mr. Walvekar submitted that the T.I.L.R. did not carry out measurement as per the order passed by the trial Court on 16.09.2014. It is therefore, necessary to carry out *Nimtana* measurement through superior officer.

6. On the other hand, Mr. Patil invited my attention to the finding recorded by the learned trial Judge in paragraph 5. In paragraph 5, the learned trial Judge considered the statements made by defendants No.1 and 4, which were produced by the Court Commissioner along with exhibit-42. In the said statements, defendants admitted the measurement procedure carried out before them and now by present application, defendants contend that the measurement is illegal and wrong. The learned trial Judge also observed that defendants will have opportunity to testify the Court Commissioner before the Court and question him about the measurement.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. For the reasons recorded in paragraph 5 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. However, 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.)