

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7294 OF 2016

Smt. Kamal Mahadu Pokharkar

...Petitioner

Versus

Sudam Hira Bagate And Ors

...Respondents

....

Mr.T.D. Deshmukh, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 25th JANUARY, 2017

P.C.

1. Not on board. At the request of Mr.Deshmukh taken up in the production board.
2. Heard Mr. T.D.Deshmukh, learned Counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged (1) the judgment and order dated 18.12.2015 below Exhibits-36 as also (2) the judgment and order dated 2.3.2016 below Exhibit-46 in Special Civil Suit No.840/2012. By order dated 18.12.2015, the learned trial Judge rejected the application Exhibit-36 made by the plaintiff for nimtana

measurement of the suit property and directions to submit report accordingly. By order dated 2.3.2016, the learned trial Judge rejected the application made by the plaintiff seeking review of the order dated 18.12.2015.

4. Mr. Deshmukh reiterated the submissions that were advanced in the trial Court. He submitted that as per the order passed by the trial Court, T.I.L.R. was appointed as a Court Commissioner to carry out measurement of the suit property. In pursuance thereof, measurements were carried out. The plaintiff filed application Exhibit-36 for directing the Superintendent of Land Records to carry out joint nimtana measurement. The plaintiff came with the case that measurement was not carried out properly. The plaintiff approached the office of the Superintendent of Land Records, Pune who informed the plaintiff to obtain orders of the Court. The plaintiff has, therefore, filed application for carrying out joint nimtana measurement through Superintendent of Land Records, Pune. The learned trial Judge, however, rejected the application.

5. For the reasons recorded in paragraph-4 of the order dated 18.12.2015, I do not find that any case is made out for interfering with the impugned order. In paragraph-4 the learned

trial Judge recorded that while carrying out the measurement the statement of the plaintiff was recorded. She did not object the work of Court Commissioner. The Court Commissioner has submitted sheet B of the measurement showing area of each of the defendants and the plaintiffs. The learned trial Judge came to the conclusion that it is not necessary to appoint Court Commissioner for nimtana measurement till the satisfaction of the plaintiff. I do not find that the learned trial Judge has committed any error. Consequently no case is made out for reviewing that order and the learned trial Judge was justified in rejecting the review petition. Hence, the Petition fails and the same is dismissed.

6. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) C.P.C.

(R. G. KETKAR, J.)