

Rajendra Trimbak Shelke ... Petitioner
Vs.
Sunita Krishna Patil ... Respondent

CORAM : R. G. KETKAR, J.
DATE : JANUARY 04, 2017

Heard Mr. Bhosale, learned Counsel for the petitioner at length.

3. In support of this Petition, Mr. Bhosale submitted that earlier, by order dated 20.06.2011 below exhibit-20, the learned trial Judge appointed Mr. N. G. Shinde, Advocate as a Court Commissioner for inspecting the land Gat No.130/1 situate at Village Belgaon along with land Gat No.128 and 129 and alleged cart way with direction to prepare rough sketch map to show existence of cart way, if any, as well as to show existence of any water well in the land of the defendant towards the eastern-north corner as also the excavated material of the water well on the cart way, if any, and to submit its report. He submitted that in pursuance of that order, the Commissioner visited the site and submitted

report dated 12.07.2011. He has taken me through the report of the Court Commissioner along with the rough sketch enclosed with that report as well as Panchanama and submitted that the Court Commissioner did not carry out the work as per clause 2 of the order dated 20.06.2011. In view thereof, plaintiff filed application at exhibit-26 for appointing Court Commissioner for submitting fresh report in pursuance of the order dated 20.06.2011 below exhibit-20. By the impugned order, the learned trial Judge rejected the application by observing that Commissioner has shown all the points on which he was ordered to carry out the inspection. All the points raised in the present application were also considered by the Court Commissioner, and therefore, the learned trial Judge did not find any substance in the application.

4. With the assistance of Mr. Bhosale, I have perused the prayers made in the Suit as also the report submitted by the Court Commissioner. After perusing the material and for the reasons recorded in paragraph 4 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from 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 appeal as contemplated by Section 105(1) of C.P.C. Liberty is reserved to the plaintiff to file objections to the report of the Commissioner, if permissible in law. Order accordingly.

(R. G. KETKAR, J.)