

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

WRIT PETITION NO.846 OF 2017

Shri Santosh Dattatraya Koli ... Petitioner

Vs.

Shri Hirachand Damodar Hazare ... Respondent

Mr.Vikrant Suryawanshi for Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 10, 2017**

P.C. :

1. Not on Board. Upon mentioning, taken on board.
2. This petition is directed against the order dated 1.7.2016 passed by the learned Joint Civil Judge Junior Division, Ichalkaranji, Kolhapur below exhibit 113. The evidence of the plaintiff is going on before the trial Court. The defendant has not yet stepped into the box. The plaintiff has moved an application for issuance of witness summons to a witness i.e., the Surveyor of Taluka Hatkanangale. The said application was opposed by the defendant on the ground that earlier, the Court Commissioner has measured the disputed premises and the witness has measured the premises without permission of the Court and, therefore, his

evidence is not to be allowed to come on record as witness for the plaintiff.

3. Perused the order of the trial Court. The plaintiff has taken an objection to the Court Commissioner's report and, therefore, it appears that by way of rebuttal, wants to lead evidence. The learned Counsel has relied on the judgment of the Privy Council in the case of Chandan Mull Indra Kumar & Ors. vs. Chiman Lal Girdhar Das Parekh & Ors.¹ He submitted that he is relying on this judgment wherein it is held that

“it is not safe for the Court to act as an expert and to overrule the elaborate report of a commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party”.

4. This principle cannot be applicable to the present set of facts as the correctness of the Commissioner's report was questioned earlier. The report of the private surveyor which is privately employed and obtained by a party cannot be precluded on the ground that earlier Court Commissioner's report is produced. To decide the veracity of the report of the Court Commissioner or any other report which has come before the Court is a matter of

¹ Part 4 135 decided on 10.10.1939

appreciation of evidence by the Judge. If the evidence is allowed, it does not mean that the said evidence is relied by the Judge.

5. There is no merit in the petition. Petition is thus dismissed.

(MRIDULA BHATKAR, J.)