IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 256 OF 2017

Shri. Subhash Raychand Kankariya
And Anr. ...Petitioners

Versus

Shri. Dattatraya Genuji Varule ...Respondent

....

Mr.Uday B. Nighot, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 01st FEBRUARY, 2017

P.C.

1. Heard Mr.Uday Nighot, learned counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the plaintiffs, have challenged the judgment and order dated 25.8.2016 passed by the learned Jt. Civil Judge, Junior Division, Junnar below Exhibit-76 in R.C.S. No.17/2008. By that order, the learned trial Judge rejected the application made by the plaintiffs for appointment of Taluka Inspector of Land Records for carrying out measurement of the plaintiffs and the defendants property

and also for submitting report as to whether the defendant has carried out the construction over the approach road of the plaintiffs for approaching their property.

3. In support of this Petition, Mr. Nighot submitted that the property of the plaintiffs is facing road. For approaching the road, door is installed in the plaintiffs property. The defendant has started construction of toilet on the road without obtaining permission. He further submitted that during pendency of the suit, the plaintiffs took out application for injunction and the learned trial Judge passed status quo order. Despite status quo the defendant has constructed the shed on the road. It is, therefore, necessary to appoint T.I.L.R. for carrying out measurement of the plaintiffs and the defendants property as also for submitting report as to whether the defendant has carried out construction over the road.

4. By the impugned order, the learned trial Judge has rejected the application. In paragraph-5, the learned trial Judge has observed that the suit is instituted by the plaintiffs for perpetual injunction. The suit does not raise any boundary dispute. It is also not case of the plaintiffs that the disputed

road is part of the plaintiffs' property. If at all the defendant has carried out construction on the road unauthorizedly, it is for the plaintiffs to adduce evidence and the plaintiffs cannot collect evidence through appointment of Court Commissioner.

5. For the reasons in paragraphs-5 and 6 of the impugned order, I do not find any fault with the impugned order. 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) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)