

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.28524/2018

Sampatrao Namdev Mane

... Petitioner

V/s.

Ramchandra Vithoba Mane & Ors.

... Respondents

Mr. Kuldeep U. Nikam for the Petitioner

CORAM: K.K. TATED, J.

DATED : NOVEMBER 27, 2018

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 04.08.2018 passed by the 5th Jt. Civil Judge, Senior Division, Sangli below Exhibit- 67 in Regular Civil Suit No. 174/2014 on Respondent - Defendant's Application under Order 26 Rule 9 and Order 39 Rule 7 of the Code of Civil Procedure, 1908 for appointment of the Court Commissioner to verify the existence of the road.

2 It is the case of the Petitioner that the road is not passing through Gut No.215 which is belonging to the Petitioner. He submits that the road is passing through Gut No.219 of village Andhali, Tq. Palus, Dist. Sangli. He submits that the Trial Court has failed to consider the fact that it is the duty of a litigant to bring on record his own evidence to prove the case. He submits

that by way of commission, the Respondent Defendant is trying to bring the evidence on record against the Petitioner Plaintiff which is not permissible. Hence, the impugned order dated 04.08.2018 is liable to be set aside.

3 Heard the learned counsel for the Petitioner at length. It is to be noted that in the present proceedings the Tahasildar, in Road Case No.25/2012 and 52/2013 has already held that the road is in existence from Gut No.215. Hence, there is dispute whether there is any road passing through Gut No.215 or 219. To solve this issue, the Trial Court has allowed the Defendant's Application for appointment of the Commissioner to verify the true facts on this cause.

4 Considering these facts and the reasons given by the Trial Court in paragraph 5 and 6 of the impugned order, I do not find any reason to entertain the Writ Petition. Hence, the Writ Petition stands rejected.

5 No order as to costs.

(K. K. TATED, J.)