

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition NO. 19 OF 2017
IN
Writ Petition NO. 5490 OF 2015

Shri Dattu Udrya Bangar

And another

...Petitioners

Versus

Shri Bimal Madhukar Shelarkar

And others

...Respondents

....

Ms. Gauri Godse, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 15th FEBRUARY, 2018

[IN CHAMBER AT 2:35 P.M.]

P.C.

1. Heard Ms.Gauri Godse, learned Counsel for the petitioners, at length.
2. Ms. Godse states that she has served the respondents by Registered Post AD and also to the Advocate representing the respondents through email. To that effect she will file affidavit of service on or before 17.2.2018. Despite service none appears for the respondents.
3. Ms. Godse invited my attention to the order dated 5.1.2017 passed by this Court in Writ Petition No.5490/2015. That Petition was

instituted by the petitioners herein challenging the judgment and order dated 1.4.2015 passed by the learned Civil Judge, Junior Division, Shahapur below Exhibit-42 in R.C.S. No.5/2014. By that order, the learned trial Judge rejected the application made by the plaintiffs under Order XXVI Rule 9 of C.P.C. for appointment of T.I.L.R. Shahapur as a Court Commissioner.

4. During the course of hearing of that Petition, it was pointed out that the petitioners had filed application dated 3.9.2014 for amending the plaint so as to claim possession from the respondents/defendants of the area which is encroached by them and said application is pending. In view thereof, the petitioners were given liberty to file application for review of this order if the application for amendment is allowed. She submitted that the application filed by the petitioners for amending the plaint was allowed. She has taken me through the amended plaint and in particular paragraph-6A and prayer clause (e). She submitted that in view of the specific liberty reserved to the petitioners, the order dated 5.1.2017 deserves to be reviewed.

5. As noted earlier, the application made by the petitioners under Order XXVI Rule 9 of C.P.C. for appointment of T.I.L.R. as a Court Commissioner was rejected by the trial Court on 1.4.2015. The

petitioners had also filed application for amendment and the same was allowed on 1.4.2015. On the same day, the learned trial Judge had also passed order below Exhibit-42 rejecting the application for appointment of Court Commissioner. A perusal of the order rejecting the application for appointment of the Court Commissioner does not indicate that the learned trial Judge has adverted to the amendment carried out in the plaint. In view thereof, liberty is reserved to the petitioner to take out appropriate application seeking review of the order dated 1.4.2015 passed by the learned trial Judge below Exhibit-42. The learned trial Judge will consider the application in the light of the amended plaint and pass appropriate orders.

6. Subject to above, the Review Petition is disposed of.

(R.G. Ketkar, J.)