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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5046 OF 2017

Mahesh R. Heganna & Ors.

...Petitioners

V/s.

Shivgonda A. Patil

...Respondent

Mr.P.M. Arjunwadkar for the Petitioners.

Mr.Vijay Killedar with Ms.Geetanjali Koli for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 19TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 22nd December,2016 passed by the learned Trial Judge below Exhibit – 50 allowing the application filed by the respondent (original plaintiff) for appointment of D.I.L.R. for the purpose of taking measurement of the property in question and the boundary marks and prepare a map of the property in question.

2. The order is impugned by the petitioners mainly on the grounds that there is no boundary dispute and secondly on the ground that by appointing a Court Commissioner, the original plaintiff, who has lost in Exhibit – 5 before the learned trial Court cannot allowed to collect the evidence.

3. A perusal of the application filed by the original plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 clearly indicates that the application was not for the purpose of ascertaining as to who was in possession of the suit property but was for the purpose of making measurement and to put the boundary marks and for preparation of a map.

4. A perusal of the order dated 22nd December, 2016 clearly indicates that no directions are issued by the learned Trial Judge while appointing the Deputy Superintendent of Land Record for the purpose of carrying out commission to submit a report as to who is in possession of the suit property. In my view, the learned Trial Judge has taken care of the same in the order dated 22nd December, 2016. The evidence has not commenced in the matter. I do not find any infirmity in the impugned order dated 22nd December, 2016 passed by the learned Trial Judge. It is made clear that the learned Court Commissioner appointed by the learned Trial Judge shall not submit any report as to who is in possession of the suit property in the said report directed to be submitted pursuant to the impugned order dated 22nd December, 2016.

5. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

Vasant
Anandrao
Idhol

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Idhol
Date: 2018.09.25
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(R.D. DHANUKA, J.)