

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4222 OF 2017

Rayat Shikshan Sanstha & Anr. .. Petitioners
vs.
Shri. Bapu Ganpati Koli &Anr. .. Respondents

Mr. S. P. Kadam, Advocate for Petitioners.
Mr. J. A. Madane, AGP for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE: 27 MARCH 2018

PC :

- 1] Heard Advocate Mr. Kadam for Petitioners and Mr. Madane, AGP for the Respondent No.2/State.
- 2] The challenge in the petition is to the impugned order dated 05.03.2016 by which the learned trial judge has appointed a court commissioner. Mr. Kadam, learned counsel for the petitioner submits that suit is not at all for encroachment as has been observed in the impugned order. Further, he submits that in the application seeking appointment of Court Commissioner, the statement was made with regard to this Court's order dated 20.03.2015. He submits that in this case, appointment of Court Commissioner is not at all necessary. He submits that Court Commissioner cannot be appointed for collection of evidence. For all these reasons, Mr. Kadam submits that the impugned order is liable to be set aside.
- 3] Upon due consideration of Mr. Kadam's contention and perusal of the record, I am satisfied that this is not the case, which warrants interference in the exercise of extra ordinary jurisdiction under

Article 227 of the Constitution of India. In the first place, the learned Trial Judge has appointed Taluka Inspector of Land Revenue (TILR) as Court Commissioner. Secondly, the Court, has observed that such appointment will assist the Court itself and resolve the disputes between the parties effectively. Thirdly, the Court Commissioner has been appointed only to take measurements and report on existence of encroachment, if any.

- 4] No doubt, there is some substance in the contention of Mr. Kadam that this Court in its order dated 20.03.2015 had not made any observation as regards the appointment of TILR or Court Commissioner and that this Court had recorded that it was informed that TILR had already carried out measurements in respect of the disputed land and submitted report to the trial court. It appears that this is not correct position.
- 5] However, this is not sufficient ground to interfere with the impugned order. Ultimately, the parties will have sufficient rights to file their objections, if necessary, to examine and cross-examine the Court Commissioner. This is really not the case for appointment of Commissioner for collection of evidence in favour of any particular party. In the impugned order, Court has itself expressed that such appointment will assist the Court in disposing of the suit in effective manner.
- 6] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Tendulkar

