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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1193 OF 2019

Shri Sitlamata Mandir, Aurangabad

PETITIONER

VERSUS

Smt. Kamlabai Padmnath More (Died) LRs & Ors. RESPONDENTS

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Mr. Ajit D. Kasliwal, Advocate for the petitioner

Mr. V. B. Patil, Advocate for respondent No.1A

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th FEBRUARY, 2019

ORDER :

1. Heard learned advocate for the petitioner and learned advocate for respondent No. 1A - caveator.

2. It appears that earlier on, application Exhibit-104 had been filed on behalf of the petitioner – appellant in Regular Civil Appeal No. 1 of 2006 seeking appointment of court commissioner for local investigation with the help of city survey authorities to ascertain location of CTS No. 20028. The appellate court, vide order dated 23rd September, 2016, had directed to file the application observing that said application can be considered at the time of final hearing considering that whether additional evidence is needed or not can be decided at the stage of final hearing. Thereafter, petitioner had moved application Exhibit-116

seeking appointment of court commissioner to find out factual situation over CTS No. 20020 and to ascertain as to whether place of worship exists thereon or not. Appellate court, vide order dated 7th August, 2017 had allowed said application Exhibit-116. However, the respondents had challenged said order by filing writ petition No. 11523 of 2017 before this court. This court, had disposed of the writ petition by remanding the matter to appellate court with a direction to decide application Exhibit-116 afresh. Thereafter, respondents had filed say (Exhibit-136) to application Exhibit-116 and requested to reject the application. The appellate court found that the application effectively amounts to investigation of status of possession, which tantamounts to collection of evidence, which is not permissible under Order XXVI, Rule 9 of the Civil Procedure Code and had rejected application Exhibit-116 on 18th December, 2018. As such, the petitioner is before this court in writ petition.

3. It appears to be the case of the respondents that petitioner though claims properties bearing Municipal House No. 5-13-63, 5-13-64 and 5-13-65 have been merged into CTS No. 20020, such a case do not form part of the pleadings.

4. Learned advocate for the petitioner contends that the

appellate court has not properly appreciated purpose underlying the application, since it is not for investigating status of possession, but to locate place of worship.

5. However, looking at the facts and circumstances and the events occurring thus far, it does not appear that the impugned order can be faulted with having regard to surrounding circumstances. Albeit, there may be some substance in the contention of the petitioner that purpose underlying the application is not appreciated, however, overall the order is seldom liable to be interfered.

5. Writ petition, therefore, is not entertained and rejected. It, however, would not undermine the opportunity to the parties to take out appropriate applications at proper stages. Observations in the impugned order and in this order are at interlocutory stage of the suit and would not have any influential value as far as merits of the case are concerned. Hopefully, regular civil appeal would be expedited.

[SUNIL P. DESHMUKH]
JUDGE