

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8745 OF 2016

Ashok Keshav Desai	...Petitioner
vs.	
Ashok Shankar Kokitkar and Ors.	...Respondents

Mr. G.N. Salunke, for the Petitioner
Mr. S.R. Pawar, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 05, 2019

P.C.:

. Heard Mr. Salunkhe, learned counsel for the Petitioner and
Mr. Pawar, learned counsel for Respondent No.1.

2. The challenge in this Petition is to the order dated 11th July, 2016 by which the learned trial Judge has appointed the Court Commissioner to visit the suit property and conduct the survey and measurement and submit his report.

3. Mr. Salunkhe submits that the issue involved in the suit is not the issue of boundary dispute. He states that the issue involved is relate to the title and for determination of such issue the appointment of Court Commissioner is absolutely necessary.

He therefore submits that the impugned order is required to be set aside.

4. Mr. Pawar, learned counsel for Respondent No. 1 defends the impugned order on the basis of reasoning reflected therein.

5. In the present case, the learned trial Judge has appointed Dy. S.L.R., Ajara as the Court Commissioner to facilitate the Court to come to the final conclusion since there are issues of survey and measurement involved. Mr. Pawar submits that the suit is for mandatory injunction and demolition of a portion of the construction is also applied for.

6. In the aforesaid circumstances, it cannot be said that there is any jurisdictional error in the impugned order so as to warrant extra ordinary jurisdiction under Article 227 of the Constitution of India. Ultimately, these are the discretionary order and in the present case, it cannot be said that the discretion has been exercised in an unreasonable manner. Further after the Commissioner's report is submitted both the parties will undoubtedly have sufficient opportunity to object, in case they are

not satisfied with the same.

7. For aforesaid reasons, this Petition is dismissed.

8. There shall be no order as to costs.

9. The interim order granted earlier is vacated.

10. All contention of all the parties are kept open.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)