

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5542 OF 2018

Mrs. Anuradha Prakash Deshpande,
Through her Power of Attorney
Shri. Prakash Madhukar Deshpande ...Petitioner
vs.
Manik Karbhari Tilekar and Ors. ...Respondents

Mr. Prakash M. Deshpande petitioner in person.
None for Respondent.

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CORAM : M. S. SONAK, J.
DATE : 03 APRIL 2019.

P.C. :-

Heard Mr. Prakash Deshpande who appears in person as attorney for the petitioner in this matter.

2] The challenge in this petition is to order dated 06/03/2018 by which the learned Trial Judge has declined the request of the petitioner to seek supplementary report from the Court Commissioner.

3] Mr. Deshpande submits that, the Commissioner in this case, has failed to perform his duty and submit report as per the direction issued in the order dated 18/10/2016. He therefore, submits that, by resorting to the provision of Order 26, Rule 10(3) of the Code of Civil Procedure 1908, the Commissioner, should be called upon to rectify the defects or deficiency and submit a supplementary report. He relies upon the decision of the Madras High Court in ***Veppanathar Alias Karuppannam Vs.***

Kaliappan, 2000 (3) CTC78.

4] On perusal of the impugned order it is seen that the learned Trial Judge has pointed out that the deficiency and defects pointed out by the petitioner are on account of want of Government record, including demarcation of plot, sketch of the suit property etc. In these circumstances, the learned Trial Judge held that no purpose would be served by calling for supplementary report.

5] According to me, the view taken by the learned Trial Judge cannot be said to be in excess of jurisdiction. This is also not a case where the learned Trial Judge can be said to have exercised the discretion unreasonably. For these reasons, the impugned order warrants no interference.

6] However, it is made clear that, since the evidence in the suit is yet to commence, it is open for the plaintiff to engage his own surveyor / expert, who can prepare a report and then be examined in the suit as the plaintiff's witness. This will, to a great extent, take care of the apprehension now expressed by the plaintiff.

7] With liberty as aforesaid, the petition is disposed of. The stay on further proceeding is hereby vacated. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)