

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8260 OF 2019

Shri Laxman Abaji Surve
Since deceased through his legal heirs
1a. Smt. Indira Laxman Surve and Ors.
Through their Constituted Attorney
Shri Daga Narayan Gosavi ... Petitioner
Vs
Shri Sukumaran Raghavan Palnitkar
@ R.S.Kumar and Ors. ... Respondents
...
Mr. Mandar Limaye I/by Mr. Mahendra M. Agavekar for the
Petitioner.
Mr. Harshil M. Parekh I/by Purnanand and Co. for the
Respondent No.3.

CORAM : SANDEEP K. SHINDE J.
DATE : AUGUST 7, 2019

P.C. :

Not on board. Taken on board.

Petitioner instituted Regular Civil Suit No.23 of 2006,
seeking declaration of his tenancy in respect of sheds/structures
originally bearing nos.7 and 8 containing by admeasurement 1000
sq.ft. approximately in aggregate being and situated at survey
no.35/3, off Village Panchpakhadi, Pokhran Road No.2, Thane

within the registraton and Sub-District of Thane and more particularly described in paragraph 1 of the Regular Civil Suit No.23 of 2006 (hereinafter called the 'Suit Premises').

2 Petitioner/plaintiff sought appointment of Court Commissioner. However, the learned Trial Court declined to appoint Commissioner vide order dated 16th April, 2019. It is against this order, plaintiff has preferred this Writ Petition.

3 Heard learned counsel for the parties.

4 It appears that the defendant no.3 herein had filed Special Civil Suit No.37 of 1980 for specific performance of concluded contract concerning land bearing Survey No.34, Hissa No.1 and Survey No.35, Hissa No.3 against the Union of India through Settlement Commissioner and the defendant nos.1 and 2 in the prsent suit. In this case, plaintiff is claiming tenancy in respect of suit premises through the defendant no.1, who was defendant no.7 in Special Civil Suit No.37 of 1980. The said suit has been decreed and in the Special Darkhast No.4 of 1995, TILR map in respect of land bearing Survey No.35/1 and 35/3 (P) which includes suit

premises herein has been filed at Exhibit 108 and 110 respectively.

5 It appears that the suit instituted by the petitioner is posted for final arguments.

6 Thus, upon taking into consideration facts of the case, I am not inclined to interfere with the impugned order. Petition is, therefore, dismissed.

7 The impugned order is non-appelable and interlocutory in nature and, therefore, it is open to the petitioner to take objection to the error or irregularity of the impugned order in the appeal from the original decree, if the impugned order has affected the decision of the subject Case. Petition is dismissed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)