

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9790 OF 2019

Shri Gopal Sopan Keche .. Petitioner
Vs.
Shri Sampath Ramchandra Pawar and ors. .. Respondents

Mr.Santaram A.Tarale, for the Petitioner.
Mr.Prasad P. Kulkarni, for the Respondent No.2.
Mr.Sandeep Babar, AGP for Respondent No.5.

CORAM : M.S.KARNIK, J.

DATE : 27th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. The petitioner is the original plaintiff. The plaintiff has filed the present Suit for declaration that the measurement carried out by the Deputy Superintendent of Land Records dated 05/04/2016 be declared as null and void. The plaintiff has further prayed for the relief that the order passed by Sub-Divisional Officer (for short 'SDO') on 30/01/2019 be declared

as null and void. It is essentially the case of the plaintiff that measurements are not carried out correctly and properly by Deputy Superintendent of Land Records in this Suit. The trial Court as well as Appellate Court rejected the application for temporary injunction on the ground that SDO, Madha is not subordinate to the Civil Court and therefore as per Section 41 of the Specific Relief Act, the plaintiff cannot seek injunction against the order passed by SDO, Madha. Against the order passed by SDO, the plaintiff has remedy of preferring Appeal before higher authority under Section 247 of the Maharashtra Land Revenue Code. Learned Counsel for the petitioner – plaintiff would submit that on a wrong advice, plaintiff has withdrawn the Appeal which was filed before the Collector against the order passed by SDO. He submits that he would approach the Collector and seek recall of the order withdrawing Appeal in view of the wrong advice.

3. Further it is to be noted that plaintiff has already filed a separate Civil Suit No. 312 of 2016 for measurement and

demarcation. In this view of the matter, plaintiff can always seek appropriate reliefs including in the nature of temporary injunction in the Regular Civil Suit No. 312 of 2016 which is pending before the Civil Court. In respect of the present subject matter and as stated earlier, learned Counsel for the plaintiff submits that he would apply for recall of the order withdrawing Appeal before the Collector. To enable the petitioner to take appropriate steps, the interim order already in operation is continued for a further period of 6 weeks from today.

4. Subject to the above observations, in the light of the findings recorded by the Courts below, I am not inclined to interfere with the order passed by the trial Court. Writ Petition is rejected.

5. It is made clear that Trial Court dealing with Regular Civil Suit No. 312 of 2016 & the Collector shall not be influenced by the observations made by me in this order.

(M.S.KARNIK, J.)