

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12510 OF 2018**

Ramkishore Ramkrupal Gupta

Through his Constituted Attorney

Ravindra Ramkishore Gupta

.. Petitioner

Versus

Balasaheb Ramchandra Satav and Anr.

.. Respondents

Mr. Pankaj Das for petitioner.

CORAM : K.K. TATED, J.

DATE : 16 JANUARY 2019.

P.C:-

. Heard learned Counsel for the petitioner.

2. By this writ petition under Article 227 of the Constitution of India petitioner original plaintiff is challenging the order dated 23.03.2018 passed by 5th Joint Civil Judge, Senior Division, Pune below Exhibit-91 in Regular Civil Suit No.193 of 2009 rejecting petitioner's application for appointment of Court Commissioner to carry out survey of the suit property and to find out whether the road is existing there.

3. The learned Counsel for the petitioner submits that the Court below failed to consider the fact that to prove the existence of road, it is necessary to appoint the Court Commissioner. Therefore, the impugned order is required to be set aside.

4. It is to be noted that in the present proceedings petitioner original plaintiff has filed Regular Civil Suit No.193 of 2009 for declaration that the plaintiff have right to carry construction over the suit property mentioned in paragraph one of the plaint and for permanent injunction.

5. Another prayer made by the learned Counsel for the petitioner in Regular Civil Suit No.193 of 2009 that respondent original defendant may be restrained by an order of injunction from restraining the petitioner's construction activities.

6. Bare reading of the prayers in Regular Civil Suit No.193 of 2009 show that there was no dispute about the existence of road at all. Not only that the petitioner has filed application below Exhibit-91 for appointment of Court Commissioner when he examined his witness and who was cross-examined by the other side.

7. Considering these facts and as it is the duty of the petitioner original plaintiff to prove his case by placing on record relevant documents, I do not find any reason to interfere in a well reasoned order dated 23.03.2018 passed by the trial Court.

8. Hence, Writ petition stands rejected.

9. No order as to costs.

(K.K.TATED, J.)