

WRIT PETITION NO. 9479 OF 2019

Mr.A.A. Kulkarni for Petitioner.
Mr.Ajit Savagave for Respondent No.1.

CORAM : A.S. GADKARI, J.
DATE : 9th March 2020.

2] Heard Mr.Kulkarni, learned counsel for the petitioner and Mr.Savagave, learned counsel for the respondent No.1/original plaintiff. Perused the record.

3] The record indicates that, it is the contention of the respondent No.1/original plaintiff that, the petitioner herein i.e. defendant No.1 has committed encroachment on his property and therefore to ascertain the exact nature and extent of encroachment in the suit property, the respondent No.1 filed the said application below Exhibit-57 for appointment of the Court Commissioner. The Trial Court by its impugned Order has allowed the said application and has appointed Deputy Superintendent of Land Record, Shirol, Taluka Shirol, District Kolhapur, as Court Commissioner to take measurement of the suit property and to submit its report to the concerned Court as per the directions in the impugned Order.

4] Perusal of record would further clearly indicate that, for ascertaining the fact that, whether the petitioner/original defendant has infact committed encroachment in the suit property, belonging to the respondent No.1/original plaintiff, it is indubitably necessary for appointment of an independent person as Court Commissioner, which the Trial Court has infact done, by the impugned Order. This Court finds no error in appointment of the Court Commissioner.

Even otherwise also, the impugned Order is purely interlocutory in nature. Moreover, the impugned Order is capable of being challenged in an Appeal, which can be preferred against a decree in the Suit, in the event the Suit is decided against the Petitioner.

In view thereof, no interference under Article 227 of the Constitution of India is called for.

Subject to what is observed above, Petition is rejected.

5] All the questions on merits in the Suit are kept open to be agitated before the Trial Court in Regular Civil Suit No. 156 of 2011.

(A.S. GADKARI, J.)