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

WRIT PETITION NO.5726 OF 2018

Ramkrishna Chhatrapati Patil ... Petitioner
Versus
Shankarlal G. Bhanushali and Ors. ...Respondents

Mr. Dinesh Tiwari i/b Dinesh D. Tiwari and Associates, for the Petitioner.

Mr. J. M. Joshi, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 6th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the Petitioner.
2. By this Petition, the Petitioner has impugned the order dated 5th December, 2017, passed by the learned 9th Joint Civil Judge, Senior Division, Thane, by which, the petitioner's application (Exhibit – 53), in Regular Civil Suit No.408 of 2016, was rejected.
3. Learned Counsel for the Petitioner submits that in the facts, it is necessary to direct the T.I.L.R. Thane, to file a report giving specification of all boundaries. The T.I.L.R's report is necessary having

regard to the dispute between the parties with respect to the boundaries.

4. Learned Counsel for the Respondent No.1 opposed the petition. He submitted that no interference is warranted in the impugned order.

5. Perused the papers including the impugned order. The Respondent no.1 is the original plaintiff who has instituted a suit being Regular Civil Suit No.408 of 2016, as against the petitioner, in connection with the suit property situated at Survey no.69, Hissa no.1A (previously described as Survey no. 69/1 (Part), admeasuring 9058.13 square meters. It appears that in the said suit the petitioner filed an application (Exhibit – 31) and prayed for appointment of a Court Commission for filing a report after inspecting and demarcating the said suit land. The said application was allowed by the trial Court vide order dated 1st September, 2016. The operative part of the said order reads thus:-

“ORDER

- 1) Application is allowed.
- 2) The T.I.L.R., Thane is hereby appointed as Commission to measure Survey no.69 Hissa no. 1A, situated at village Shil, Taluka and District Thane and to file the report along with a map to the Court

making specification of all boundaries.

- 3) Defendants are directed to deposit the measurement fees to the concerned office within 15/09/2016 and the measurement report shall be filed in the Court on or before 30/09/2016.
- 4) Issue letter to T.I.L.R. Thane accordingly.”

6. It is not in dispute that pursuant to the said order dated 1st September, 2016, the T.I.L.R., Thane measured the said suit property and filed his report along with a map giving specification of all boundaries. Thereafter, on 29th July, 2017, the petitioner again filed an application, praying therein, that the T.I.L.R. Thane be directed to file a report making specification of all the boundaries. The said application (Exhibit – 53) was rejected by the trial Court vide order dated 5th December, 2017. The said order has been impugned in this petition.

7. As noted above, the T.I.L.R. Thane has already filed his report along with the map in the trial Court after giving specification of all boundaries and hence there is no question of again directing the T.I.L.R. Thane to give specification of all boundaries. It is always open for the petitioner to take recourse to Order XXVI Rule 10(3) of Code of Civil Procedure, if he is aggrieved by the report of the T.I.L.R. Thane.

8. Considering the aforesaid, no infirmity can be found in the impugned order.

9. The Petition is accordingly dismissed.

REVATI MOHITE DERE, J.