

assumptions and presumptions. According to him, the Trial Court has recorded reasons affecting the merits of the matter. The Trial Court was not justified in commenting on merits of the matter even before leading evidence. The provisions of Order 39 Rule 7 of the Code of Civil Procedure are not properly considered by the Trial Court while rejecting the prayer of the Petitioner, seeking measurement of land by the Court Commissioner which would facilitate effective adjudication of the suit. He further submitted that by the impugned order, the doors of the Petitioner are closed for moving an application under Order 26 Rule 9 at subsequent stage. He, therefore, submitted that the impugned order is liable to be set aside by allowing the petition.

3. Per contra, the learned Senior Advocate for Respondent No.3 supported the impugned order.

4. It is a matter of record that, the Trial Court has passed the impugned order, which runs into 38 pages. At the initial stage, when the Trial Court was considering the application under Order 39 Rule 7, it was not necessary for the Trial Court to pass such a lengthy order. However, there is no illegality or perversity in the order passed by the Trial Court.

5. The apprehension of the Petitioner that the Trial Court has made observations on merits of the suit which will come in the way of

the Petitioner, is misplaced and misconceived. The Trial Court will decide the suit on the basis of evidence led by the parties. Therefore, whatever observations on merits made by the Trial Court at the initial stage would be of no consequence at the time of deciding the suit finally on the basis of evidence led by the parties.

6. The another submission of the Petitioner is that by the impugned order, the doors are closed to the Petitioner for moving the application under Order 26 Rule 9 at subsequent stage, if the need be, is also misconceived. The Trial Court in Para-48 of the impugned order has observed thus;

“It is open to the Court to appoint commissioner to inspect and ascertain nature and extent of construction made by the defendant”.

Perusal of the impugned order, therefore, does not give an impression that the Trial Court has closed doors of the Petitioner to move application under Order 26 Rule 9 at subsequent stage. The Petitioner is at liberty to file application Order 26 Rule 9 at a latter stage.

7. For the aforestated reasons, there is no merit in the writ petition. Hence, the writ petition is dismissed with above observations.

(N. B. SURYAWANSHI, J.)