

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.838 OF 2022

Indumati Jaywant Patil & Ors. .. Petitioners

Versus

Shrikant D. Mhatre (deceased) through
LHRS Meena Shrikant Mhatre & Anr. .. Respondents

...

Mr.Ranjit Thorat, Senior Advocate i/b Mr.Pandit Kasar for the
Petitioner.

...

CORAM: RAVINDRA V. GHUGE, J.
DATED : 27th JANUARY, 2022

P.C:-

1. By this petition, the petitioners seek to challenge the order dated 17/02/2021, passed by the learned trial Court below Exh.113 in RAE Suit No.744 of 1993.

2. The grievance of the petitioners is that the Court Commissioner needs to be examined as the report of the Court Commissioner has been filed in 1993. The learned counsel for the petitioners has drawn my attention to the grounds at clauses (a) to (l) formulated in the memo of the petition. He submits that unless the Court Commissioner is examined, the report of the Court Commissioner would not stand proved though it has been exhibited.

3. It is well settled law that a Court Commissioner's report can be disputed by either of the litigating parties and if the trial Court comes to a conclusion that the report of the Court Commissioner is not dependable, it can set aside the said report.

4. The learned counsel for the petitioner submits that till today, none of the litigating parties have disputed the report of the Court Commissioner tendered in 1993.

5. The petitioners/plaintiffs tendered a list of witnesses on 11/02/2000, which is seven years after the Court Commissioner's report was tendered. The Court Commissioner was not included in the list of witnesses. Exh.113 has been filed by the petitioner on 17/03/2020, i.e. almost 17 years after the Court Commissioner tendered the report in the suit for examining the Court Commissioner.

6. The law does not come to the aid of a sleeping litigant. Nobody had restrained the plaintiffs from including the Court Commissioner in the list of witnesses. After 27 years of the pendency of the suit, the plaintiffs still intend to prolong the suit by seeking permission to examine the Court Commissioner.

7. Considering the above and taking into account the reasons assigned by the trial Court, while rejecting the

application (Exh.113), I do not find that the impugned order can be termed as perverse or erroneous. This petition, being devoid of merits, stands dismissed.

(RAVINDRA V. GHUGE, J.)