

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8693 OF 2018

M/s. Tharwani Super Structure Pvt. Ltd. ..Petitioner

Versus

Mr. Shreeram Vithal Mhatre and Ors. ..Respondents

Mr. Girish R. Agrawal, for the Petitioner.

Ms. Minal Chadnani i/by Jaiwant S. Chandnani, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th APRIL, 2022

PC.

1. Heard Mr. Girish Agrawal, learned counsel for the petitioner/plaintiff.

2. Perused the order impugned.

3. The Court below has rejected the prayer vide order dated 23rd January, 2018 whereby prayer for appointment of Court Commissioner was made. Considering the nature of relief claimed in the plaint and the stage at which the proceedings are taken out, in my opinion, the Court below was justified in rejecting the prayer.

4. What has been sought in the plaint is appointment of TILR and carry out survey measurement and fix the boundaries.

Such prayer cannot be granted by the interim relief as final relief sought in the plaint is to that effect.

5. On instructions, Mr. Girish Agrawal, learned counsel for the petitioner has not pressed the present petition.

6. My attention is rightly invited to the Division Bench order dated 18th February, 2022 passed *inter se* between the parties hereto in Writ Petition No.1653 of 2022, thereby hearing of the suit is already expedited.

7. Considering the nature of claim made in the suit, Mr. Girish Agrawal, learned counsel for the petitioner would urge that in view of judgment of Apex Court in the matter of ***E. Achuthan Nair Vs. P. Narayanan Nair and Anr.*** reported in ***(1987) 4 SCC 71***, petitioner/plaintiff be permitted to move afresh once the recording of evidence in the suit commences.

8. The petition as such stands dismissed as not pressed with liberty to the petitioner/plaintiff to move for seeking similar relief as prayed in the above matter by the Apex Court.

[NITIN W. SAMBRE, J.]