

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7829 OF 2015

Abdulla Ibrahim Aklekar

.... Petitioner

Versus

Kamruddin Adam Mandlekar & Ors.

.... Respondents

Mr. M. Saeed Kadu for the Petitioner.

Mr. Swapnil V. Walve for the Respondents.

CORAM : VALMIKI SA. MENEZES, J.

DATE : 22nd DECEMBER, 2022

PC. :

1. Rule. Rule made returnable forthwith.
2. By consent of parties, this petition is taken up for final disposal.
3. This is a Writ Petition under Article 227 of the Constitution of India impugning judgment and order dated 15.06.2015 below Exhibit 94, passed by the Joint Civil Judge, Junior Division at Mangaon, in Regular Civil Suit No.128 of 2012, rejecting the petitioner's prayer for appointment of a Commissioner to ascertain the encroachment alleged to have been committed by the defendants into the suit property claimed by the petitioner.
4. After hearing the matter for sometime, the parties have consented to dispose of this Writ Petition with following order:-

(i) The impugned order dated 15.06.2015 passed by the Joint

Civil Judge, Junior Division at Mangaon, in Regular Civil Suit No.128 of 2012 is hereby quashed and set aside.

(ii) The application at Exhibit 94 for appointment of a Commissioner to ascertain the boundary of the suit property and the extent of the encroachment, if any, alleged to have been committed by the defendants in the suit property, stands allowed.

(iii) The Civil Court to appoint a Commissioner of its choice to undertake the exercise to identify the encroachment, if any.

(iv) The parties may thereafter cross-examine the Commissioner on the report, if permitted by the Court and the suit to proceed in accordance with law.

(v) The Trial Court is requested to dispose of Regular Civil Suit No.128 of 2012 as far as practicable within a period of one year from the date of receipt of this order.

(vi) The interim relief granted by order dated 05.08.2015 to stay the proceedings, stands vacated.

5. Rule is made absolute in the above terms.

6. Writ Petition stands disposed of.

[VALMIKI SA. MENEZES, J.]