

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.12752 OF 2019

Kisan Rambhau Kanskar

..Petitioner

Versus

Lahu Ramchandra Bagal and Ors.

..Respondents

Mr. Uday B. Nighot, for the Petitioner.

Ms. Tejal Rasal i/by Prajakt M. Arjunwadkar, for Respondent Nos.1 to 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th APRIL, 2022

PC.

1. Heard Mr. Uday Nighot, learned counsel for the petitioner and Ms. Tejal Rasal holding for Mr. Arjunwadkar, counsel appearing for the respondents/plaintiffs.

2. The respondents initiated Special Civil Suit No.139 of 2017 for removal of encroachment, declaration and mesne profits. After the issues are framed i.e. after the trial has commenced, application Exh.12 is taken out for appointment of Court Commissioner which is allowed vide impugned order dated 17th July, 2019. As such, this petition.

3. Drawing support from the judgment of this Court in the matter of *Kalyan Santram Kawade and Ors. Vs. Khanderao alias Khandu Ganpati Kawade and Ors.* reported in *2015(4) Mh.L.J. 429* submissions of Mr. Uday Nighot are, the exercise of power for appointment of Court Commissioner by the Trial Court is not justified, particularly, when the such order is passed before the recording of evidence. According to him,

the order impugned virtually permits the respondents/plaintiffs to collect evidence and that being so, the order impugned warrants interference.

4. Ms. Tejal Rasal, counsel for the respondents/plaintiffs supports the order impugned and sought dismissal.

5. The fact remains that trial in the suit has already commenced. The prayer in the suit is for removal of encroachment, declaration to that effect and mesne profits.

6. The suit is based on earlier measurement carried out by the respondents/plaintiffs as is rightly pointed out by the counsel for the respondents/plaintiffs.

7. In the aforesaid background, having regard to the fact that the suit is for removal of encroachment and trial in the suit has already commenced, the Trial Court is justified in allowing appointment of Court Commissioner. The report of the Court Commissioner is always subject to scrutiny and the present petitioner/defendant will get appropriate opportunity of confronting the Court Commissioner. That being so, no case for interference in the order impugned is made out.

8. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]