

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2429 OF 2016

Ishwarrappa S/o Mahalingappa Dongre
Deceased through L.Rs.

Ashok S/o Iswarappa Dongre

.... Petitioner

Versus

Dashrath S/o Vishwanath Salunke
and others

.... Respondents

.....
Mr. Ankush N. Nagargoje, Advocate for the Petitioners
Mr. Satyajit Bora, Advocate for Respondent Nos.1 and 2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th JULY, 2023

ORDER :

1. Order passed by the learned Civil Judge, Junior Division, Jamkhed, below Exhibit-307 in Regular Civil Suit No.69 of 2003, thereby partly allowing the application filed by the petitioner is challenged in the present petition.

2. The application filed by the petitioner for issuing witness summons to Chief Executive Officer, Jamkhed Municipal Council with a direction to inspect the east-west road on the south side of the suit property is partly allowed and the prayer of the petitioner for site inspection by the concerned

officer of Muncipal Council, Jamkhed is rejected. The petitioner is aggrieved by this order.

3. Heard the learned advocate for the petitioners and learned advocate for respondent Nos. 1 and 2. Perused the writ petition memo, annexures thereto, and the impugned order.

4. Admittedly, earlier application Exhibit-180 filed by the petitioner for appointment of Taluka Inspector of Land Records (TILR) as Court Commissioner was rejected by the Trial Court as the suit property was not subjected to the city survey. Petitioner, thereafter, filed application Exhibit-189 for examination of *Gramsevak* to inspect the property and then come for giving evidence was allowed, but the petitioner has filed *purshis* that he does not want to examine the said witness. Thereafter, the application Exhibit-195 filed by the petitioner seeking appointment of lawyer as a Court Commissioner was rejected, and the said order is confirmed by this Court in writ petition No.1246 of 2014. In the backdrop of these facts, the Trial Court is justified in partly allowing the application and accepting the prayer of the petitioner for issuance of witness summons to the Chief Executing Officer of Municipal Council. The prayer of the petitioner seeking

direction to the Chief Executive Officer to inspect the suit property before coming for giving evidence is rightly rejected by the Trial Court. Since earlier stage, the prayers of the petitioner are rejected, the petitioner could not have sought the same prayer.

5. For the aforesaid reasons, no interference is called for in the order impugned in the present petitioner as there is no jurisdictional error or error of law committed by the Trial Court while passed the order. Writ petition being devoid of merit is dismissed, with liberty to the petitioner to file application for appointment of Court commissioner after the conclusion of recording of evidence. If such application is filed at that stage, the same shall be considered by the Trial Court on its own merits without being influenced by the rejection of earlier applications for appointment of Court Commissioner filed by the petitioner.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane