

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7725 OF 2023

Mandakini Sahebrao Taktode Petitioner

Vs.

Rajabai Mahadev Thorat Respondent

Mr. Priyal G. Sarda for the Petitioner.

None for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th JUNE 2023.

P. C.

1. Heard the learned counsel for the petitioner.
2. The petitioner's application for a direction to the Deputy Superintendent of Land Records appointed as the Court Commissioner to show the exact area of the encroachment made by the defendant on the land of the plaintiff came to be rejected vide the impugned order dated 3 December 2022.
3. The proceedings in question being RCS No.871 of 2020 was instituted by the petitioner seeking relief of permanent injunction. In the said proceedings, an application for appointment of the Court Commissioner for the measurement of boundaries came to be allowed and the Deputy Superintendent of Land Records, Madha was appointed as a Court Commissioner to inspect and measure the Suit property and to file a report along with the map to the Court.
4. Upon the map being submitted by the Court Commissioner,

the application was filed seeking a direction to show the exact area of the encroachment which came to be rejected. It is to be noted that the Suit was filed for simpliciter injunction not to disturb the boundaries and not to carry out any encroachment. It is not the case of the petitioner / plaintiff that there was any encroachment on the property of the plaintiff and simpliciter injunction was sought. The Suit being Suit for injunction, the appointment of the Court Commissioner was made despite the settled position that it is usually in the case of encroachment or boundary disputes that Court Commissioner is appointed. Be that as it may, there is now a report of the Court Commissioner which has come on record pursuant to the measurement which has been carried out.

5. The contention of the learned counsel for the petitioner is that the exact area of encroachment will be required as the map in question shows that the defendant has encroached over the land of the petitioner. The trial Court while rejecting the application has taken into consideration the petitioner's application dated 15 February 2022 stating that the measurement is carried out by the Court Commissioner and the area in possession of the plaintiff and defendant are properly shown as per their actual position.

6. In event, it is the contention of the petitioner that the map in question shows the encroachment by the defendant, it is always open for the petitioner during the cross examination to bring out the necessary fact before the Court. For that purpose, it is not necessary to direct the Deputy Superintendent of Land Records to show the exact area of the encroachment particularly considering the fact that the Suit in question is the Suit for injunction.

7. In that view of the matter, there is no infirmity in the impugned order dated 3 December 2022, Writ Petition stands dismissed.

SHARMILA U. DESHMUKH, J.