

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11694 OF 2019

Shrinivas Laxman Dombe

...Petitioner

Versus

Smt. Shantabai Vasant Inamar & Anr.

...Respondents

...

Mr. Vaibhav R. Gaikwad, for Petitioner.

Ms. Bhavika Shinde a/w. Ms. Pushpalata Khot a/w. Mr. Umesh Mankapure for the Respondent No.2A to 2 D.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 14 JULY 2023.

P.C.:

This petition is filed challenging the order dated December 18, 2018 passed by the Jt. Civil Judge, Junior Division, Vita, rejecting Petitioner-Plaintiff's application at Exh.165 for re-measurement of the construction through higher official viz. District Superintendent of Land Records, Sangli.

2. Petitioner-Plaintiff has filed Regular Civil Suit No.131 of 2003 initially seeking injunction against defendants not to interfere with his possession over the suit property. Since some construction was allegedly carried out by the defendant during pendency of the suit, Petitioner-Plaintiff amended the plaint and sought the relief of

mandatory injunction for removal of the construction. He then moved an application at Exh.146 for appointment of Court Commissioner for measurement of the construction allegedly carried out by the defendants. The application was allowed by the Trial Court by order dated March 10, 2016, appointing an officer in the office of City Survey to conduct measurement of construction situated at Survey No. 5434. The Court Commissioner was directed to submit the sketch map showing position of each room and other construction carried out on land bearing City Survey No.5434. The Court Commissioner was further directed not to make any observations about ownership or possession of the land in question. It appears that in pursuance of the order dated March 10, 2016, the Court Commissioner carried out measurements on January 18, 2017 and has submitted his report.

3. The Petitioner-Plaintiff moved application at Exh.157 for re-measurement of the construction on the ground that the Court Commissioner had not taken on record the original extracts of Nagar Parishad and extract of inquiry register relating to City Survey No.5434 and that no conclusion was drawn by the Court Commissioner based on the said extracts. The application at Exh.157 came to be rejected by the Trial Court by order dated June 13, 2018 on the ground that an opportunity is available to both the parties to cross-examine the Court Commissioner and that therefore there was no necessity of re-measurement of the land. The order was not challenged and attained finality.

4. Petitioner-Plaintiff thereafter moved one more application at Exh.

165 for appointment of higher officer, District Superintend of Land Records, Sangli, as the Court Commissioner citing the same reasons as were cited in the application at Exh.157.

5. The Trial Court has proceeded to reject the application at Exh.165 by its order dated December 18, 2018, which is the subject matter of challenge in the present petition.

6. Mr. Gaikwad learned counsel appearing for the Petitioner-Plaintiff would submit that the Trial Court has erred in assuming that the application filed by the Petitioner at Exh.165 was for re-measurement of the construction by same official. The application was filed for re-measurement of the land through a higher official viz. District Superintend of Land Records, Sangli. He would submit that this vital aspect has not been taken into consideration by the Trial Court while rejecting the application by order dated December 18, 2018.

7. Ms. Shinde the learned counsel appearing for Respondent would oppose the petition and support the order passed by the trial Court.

8. After having heard the learned counsels for the parties and on perusal of the records of the case ,it is seen that one of the reliefs sought for in the plaint is for removal of the construction allegedly carried out by the defendants on the land bearing City Survey No.5434. On application moved by Petitioner-Plaintiff for appointment of Court Commissioner, City Survey Officer was appointed on March 10, 2016 for measurement of the construction alongwith sketch indicating position of each room and other construction carried on land bearing City Survey No.5434. The measurement is admittedly

carried out and report is placed before the Trial Court.

9. The Petitioner-Plaintiff thereafter moved application at Exh.165 for re-measurement of the construction by citing reason that the Court Commissioner failed to place on record the original extracts of Nagar Parishad and extract of inquiry register of land City Survey No.5434. In my view, the said reason cited to seek re-measurement of land was completely misplaced. The Court Commissioner was merely required to measure the exact construction carried out at the site and indicate location of different rooms and other construction in the sketch. This job is apparently carried out by the Court Commissioner. The order dated March 10, 2016 nowhere directed Court Commissioner to place on record any extract as sought to be suggested by the Petitioner- Plaintiff in application at Exh.157. The application Exh.157 for re-measurement of the land ought to have been rejected by the Trial Court on this ground. However, the same came to be rejected by the Trial Court by citing of the altogether different reason of availability of parties to cross-examine the Court Commissioner.

10. Be that as it may. The Petitioner-Plaintiff continued filing one more application for re-measurement of the land at Exh.165, this time for seeking appointment of a higher official viz. District Superintend Land Records, Sangli. Perusal of the application at Exh.165 would show that the Petitioner-Plaintiff cited the very same reason of failure to place original extract of Nagar Parishad and extract of inquiry register relating to City Survey No.5434 for re-measurement through District Superintend of Land Records, Sangli. In my view, the Petitioner-Plaintiff could not have sought re-measurement of the land through a higher official on the same ground which

was cited in application at Exh.157, which was rejected on June 13, 2018. The Trial Court, in my view, rightly rejected the application at Exh.165. Writ Petition being devoid of merit is dismissed without any order as to costs.

SANDEEP V. MARNE, J.

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