

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10887 OF 2022

Abdul Hamid Haider Kamaliwale

...Petitioner

Versus

Narayan Hari Kale Since Decd.

Thr Legal Heirs

...Respondents

Mr.Drupad S. Patil, for the Petitioner.

Ms.Neeta Karnik, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13 APRIL 2023

JUDGMENT :-

. Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2. Rule. Rule made absolute. By consent heard finally at admission stage.

3. It is contention of the learned counsel for the Petitioner that Trial Court had appointed Court Commissioner for taking measurement of the suit premises. After taking measurements the Court Commissioner submitted report along with map before the Trial Court.

4. As per the Petitioner the said measurement's were not carried out as per the order of the Trial Court. Hence, the Petitioner filed Application before the Trial Court to direct the Court Commissioner to carry out fresh measurements. But the said Application was rejected which is under challenge.

5. The learned counsel for the Respondents submits that the report of the Court Commissioner is filed before the Trial Court. It is neither accepted nor rejected till date. It is pending before the Trial Court. If the Trial Court has not decided to accept or reject the Commissioner's report, the Writ Petition filed by the Petitioner is pre-matured. Hence, requested to dismiss the Writ Petition.

6. The learned counsel for the Petitioner submits that if the Trial Court rejects the Court Commissioner's report, in that case the Petitioner has no grievance. But if Trial Court accepts the Court Commissioner's report in that case liberty be given to the Petitioner to challenge the said order or file fresh Application to seek fresh measurements.

7. The learned counsel for the Respondents submits that the said Application be decided on merit. Whether the Petitioners are entitle to seek measurement or not.

8. Considering the submissions of both learned counsel,
I pass following order.

ORDER

- (i) Writ Petition is disposed of.
- (ii) The Petitioner can file fresh Application for seeking measurement, if Trial Court accepts the Court Commissioner's Report. The Trial Court shall decide the Application filed by the Petitioner on its own merit without influencing the observations of this Court as well as impugned order passed earlier.
- (iii) All contention of both parties are kept open.

(SHIVKUMAR DIGE, J.)