

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 657 OF 2021

Sushilabai Ganpat Nikam (deceased) and ors. ...Petitioners

Versus

Tukaram Maruti Kadam and ors. ...Respondents

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Mr. Sumit Chavan i/b Sushant Prabhune for the Petitioner.

Mr. Ketan Joshi a/w Siddharth Karpe for Respondent Nos. 1 & 2.

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CORAM : N.R. BORKAR, J.
DATED : 29 NOVEMBER 2023

P.C. :-

. The petitioners herein had filed the suit for declaration and injunction against the respondents.

2. The dispute between the parties is in relation to the road, which is there in between the lands owned by the petitioners and the land owned by the respondent Nos. 1 & 2. According to the petitioners, disputed road is part and parcel of land owned by them bearing Gat No. 503, whereas according to the respondent Nos. 1 and 2, the disputed road is part and parcel of land owned by them bearing Gat No. 496.

3. The claim of the petitioners was based on the report of Cadestral Surveyor. The report of Cadestral Surveyor was discarded and the suit was

dismissed.

4. In appeal at the instance of the petitioners, the judgment and decree passed by the trial Court was set aside and the matter was remanded back to the trial Court with a direction that the trial Court shall decide the matter afresh after appointing new Cadestral Surveyor.

5. Accordingly, a new Cadestral Surveyor was appointed, who submitted his report, which was supporting the claim of the petitioners.

6. The trial Court again discarded the report of the Cadestral Surveyor and dismissed the suit.

7. The petitioners in an appeal filed by them against the judgment and decree of the trial Court filed an application for appointment of Cadestral Surveyor. The Appellate Court rejected the said application by the order impugned.

8. I have heard the learned counsel for the petitioners and the learned counsel for the contesting respondent Nos. 1 and 2.

9. The learned counsel for the petitioners has drawn my attention to the findings recorded by the trial Court. It is submitted that on both the occasions the trial Court discarded the reports of the Cadestral Surveyors

on technical grounds and thus application was made before the appellate Court for appointment of Cadestral Surveyor. It is submitted that controversy between the parties can be resolved only on the basis of report of Cadestral Surveyor. It is submitted that the appellate Court therefore ought to have allowed the application.

10. On the other hand, the learned counsel for the contesting respondents supported the impugned order.

11. I have perused the findings recorded by the trial Court. In my view as the appeal is still pending, it would not be appropriate to make any observation and it would be appropriate to direct the appellate Court to decide the appeal on merit. The appellate Court shall, however, while deciding the appeal record specific finding as to whether the disputed road is part and parcel of the land owned by the petitioners or not. To record such finding, the appellate Court, if necessary, shall take all necessary steps permissible in law including appointment of Cadestral Surveyor. The appellate Court shall decide other issues on its own merits.

12. The Writ Petition is disposed of in aforesaid terms.

(N.R. BORKAR, J.)