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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5251 OF 2015
WITH
INTERIM APPLICATION NO. 1149 OF 2020

Vasant Nagnath Ransinghe

Petitioner

.. (Orig. Defendant No.1)

Versus

Vithal Bhimrao Mali and Ors.

.. Respondents

-
- Mr. Rahul Kasbekar i/by Mr. Surel Shah, Advocate for Petitioner.
 - Mr. Ajay A. Joshi, Advocate for Respondent No.1.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2023.

P.C.:

1. Heard Mr. Kasbekar, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent No.1 for some time.

2. Perused the order dated 03.01.2015 passed below Exhibit-122 and Exhibit-128 in Regular Civil Suit No.204 of 1994 by the Trial Court.

3. Plaintiff (Respondent herein) filed Application seeking amendment below Exhibit-122 whereas Defendant (Petitioner herein) filed Application below Exhibit-128 for issuing fresh directions to the Court Commissioner i.e. Nimatanadar to measure the suit property as per the directions given by the learned Trial Court in its order passed below Exhibit-87.

4. The common order passed is below Exhibit-87 and Exhibit-93 and the commissioner's report pursuant to the order passed therein was considered by the learned Trial Court. It is seen that pursuant to the order passed below Exhibit-87, M.R. No.41 of 2012 came to be effected and Nimtanadar i.e. Court Commissioner measured the suit land and submitted his report. In the report which was submitted it was observed that there was an encroachment of an portion ad-measuring 195 square meters. Various contentions were raised by the Petitioner before the learned Trial Court that the measurement was not carried out as per the sale deed executed between the parties, that the Plaintiff had rectified the sale deed and changed its boundaries and therefore the dispute area of encroachment was shown wrongly etc.

5. The learned Trial Court while considered the Plaintiff's Application below Exhibit-122 returned the findings that merely allowing the amendment in respect of measurement carried out by the Nimtanadar under the orders of the Court would not mean that the Plaintiff had succeeded in the suit proceedings unless the Plaintiff would establish his entitlement over the suit property as also more specifically over the encroached portion of 195 square meters which was shown in the report of the Court Commissioner. The learned Trial Court held that only if he succeeds in doing so, he will be entitled for recovery of possession of the same.

6. In that view of the matter, the learned Trial Court accepted the contention of the Petitioner and allowed Application below Exhibit-122 to take on record the report of the Nimtanadar i.e. Court Commissioner in respect of measurement of the suit property and accordingly rejected the Application below Exhibit-128 for fresh appointment of the Court Commissioner filed by the Defendant (Petitioner herein). The reasons given by the learned Trial Court in the order dated 03.01.2015 are not only cogent and relevant but also reasoned in view of the earlier order passed by the learned Trial Court below Exhibit-87 and Exhibit-93 therein.

7. In that view of the matter, the impugned order dated 03.01.2015 does not call for any interference and is sustained.

8. At the request of Mr. Kasbekar, learned Advocate for the Petitioner and Mr. Joshi, learned Advocate for Respondent No.1, the learned Trial Court is requested by this Court to complete the trial of the pending suit which is now transferred to the Court of Civil Judge Junior Division, Malshiras to dispose of the pending suit within a period of 12 months from today.

9. With the above directions, Writ Petition is disposed.

10. In view of disposal of the Writ Petition, pending Interim Application No.1149 of 2020 does not survive and is accordingly disposed.

[MILIND N. JADHAV, J.]

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