

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15247 OF 2022

Uttam Ganpat Sutar

.....Petitioner

Versus

Sharda Shankar Sutar

and others

.... Respondents

Mr. S.G. Kudle, Advocate for the Petitioner.

Mr. Prasad B. Kulkarni, Advocate for the Respondent No.1

CORAM : SARANG V. KOTWAL, J.

DATE : 30th MARCH, 2023

P.C. :

1. The Petitioner has challenged the order dated 17.6.2022 passed below Exhibit-74 in Final Decree Application No.3/2015 passed by the 3rd Jt. Civil Judge, Senior Division at Solapur.

2. Heard Shri S.G. Kudle, learned counsel for the Petitioner and Shri Prasad Kulkarni, learned counsel for the Respondent No.1

3. From the arguments of both learned counsel, the facts are as follows :

The suit was filed originally by the Respondent No.1 herein for partition. That suit was decreed in her favour on 1.3.2014. An Appeal was filed against that decree before the District Court which was dismissed vide order dated 29.9.2014. Thereafter the Second Appeal was preferred in this Court, which was also dismissed on 10.2.2022. In the meantime, the Respondent No.1 initiated the execution proceedings vide Final Decree Application No.3/2015 before the Civil Judge, Senior Division at Solapur. On 15.7.2017, the learned Judge appointed Advocate Marathe as the Court Commissioner for the purpose of preparation of chart for the purpose of partition of the house property as per the decree. It was also directed that the said Advocate was at liberty to take help of an architect or an engineer for the purpose of preparation of map and chart for the purpose of partition of the suit property as per the decree.

4. The Petitioner preferred an application on 18.4.2022 under O-26 R-9 of C.P.C. mentioning that the

Court Commissioner has filed his report in the Court and the purpose of his appointment was over and, therefore, new Court Commission in the form of City Survey Officer, North Solapur be appointed. This application was rejected by the impugned order, which is under challenge before this Court in this Petition.

5. Learned Judge while rejecting said application observed that the Advocate Shri Marathe was permitted to use the services of an architect or an engineer and that he had not submitted his report. The Commissioner himself has no objection for his appointment and, therefore, on these grounds it was not necessary to cancel his appointment and appoint an officer from the City Survey Office as the Court Commissioner.

6. Learned counsel for the Petitioner submitted that the O-26 R-9 of C.P.C. provides for framing of the rules; and according to learned counsel for the Petitioner an Advocate could not have been appointed as a Court Commissioner in the execution proceedings of the decree passed in the

partition suit. He relied on the judgment of the Hon'ble Supreme Court in the case of **Radhey Shyam Rastogi Vs. Ashish Kumar and another** passed in Civil Appeal No.5427/2008 on 2.9.2008.

7. Learned counsel for the Respondent No.1 submitted that no rules are framed under O-26 R-9 of C.P.C. prohibiting appointment of an Advocate as Court Commissioner. He submitted that the executing court had given permission to the Advocate to take help of an architect or an engineer. The impugned order was passed on sound reasoning and, therefore, it did not call for any interference.

8. I have considered these submissions. Learned counsel for the Petitioner could not point out any rule prohibiting appointment of an advocate as Court Commissioner under O-26 R-9 of C.P.C. The judgment relied on by learned counsel for the Petitioner was in respect of a dilapidated building and, therefore, in the facts of that case the services of an engineer was found necessary. Even in

that judgment, the Hon'ble Supreme Court had not observed that an Advocate could not be appointed as Court Commissioner. The reasoning given by the Executing Court in the impugned order is sound. I do not see any reason to interfere with the said order. In view of this discussion, I do not find any merit in this Petition. It is accordingly dismissed.

(SARANG V. KOTWAL, J.)

Digitally signed
by
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