

Ajay

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

WRIT PETITION NO. 2985 OF 2024

Shankar Dattatray Chopdar

.. Petitioner

Versus

Dr. Ravindra Narayan Shinde

.. Respondent

-
- Mr. Mandar G. Bagkar, Advocate for Petitioner.
 - Mr. Rahul Walvekar, Advocate for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 17, 2024.

P.C.:

- 1.** Heard Mr. Bagkar, learned Advocate for Petitioner and Mr. Walvekar, learned Advocate for Respondent.
- 2.** After hearing Mr. Patil on 04.03.2024 this Court had passed the following order:-

“1. Heard Mr. Patil, learned Advocate for Petitioner.

2. Perused the impugned order dated 12.01.2024 passed in Application filed below Exhibit-121 in Regular Civil Suit No.137 of 2018.

3. There is a history which has been submitted by Mr. Patil which needs to be delineated for adjudication of the present Writ Petition. The original suit is Regular Civil Suit No.137 of 2018 filed for injunction. Application for Court Commissioner was filed by the Plaintiff below Exhibit-16 which came to be allowed immediately after filing of the suit proceedings by virtue of which Civil Engineer was appointed as Court Commissioner to carry out survey and measurement of the subject / suit property and wall which were standing constructed thereupon including measurement of dimensions of the said wall.

4. That report was submitted by the Civil Engineer to the Trial Court. Thereafter it is seen that on 05.03.2022, an Application filed below Exhibit-56 on similar lines by the Plaintiff and it was allowed once again and the Deputy Superintendent of Land Record (for short '**DSL**R') came to be appointed as a Court Commissioner once again to survey, measure and verify the dimensions of the suit property as also the wall which stood constructed thereupon. It is next seen that on 02.02.2023, the Plaintiff filed a third Application below Exhibit-65 seeking appointment of Taluka Inspector of Land Record (for short '**TIL**R') to once again survey and measure the dimensions of the suit property and dimension of the wall standing thereon. This third Application is rejected by the learned Trial Court by the impugned order with cogent reasons. That order is at page No.42 of the Writ Petition.

5. Issues are framed on 20.03.2023 thereafter. Parties have led evidence. Mr. Patil would submit that both the Court Commissioners who submitted their reports were earlier examined before the learned Trial Court as witnesses. Parties filed their pursis for closure of evidence and commenced with final arguments. Plaintiff's final arguments are concluded on 29.12.2023 and Defendant's final arguments commenced thereafter. Defendant's final arguments are heard on 29.12.2023 and 04.01.2024 and are at the part-heard stage.

6. At this juncture, Plaintiff's filed a fourth application below Exhibit-121 on 11.01.2024 seeking appointment of Commissioner for survey and measurement of dimensions of the suit property and measurement of dimension of the wall standing constructed thereon. The learned Trial Court during course of final arguments allowed this application by the impugned order dated 12.01.2024.

7. The stage and juncture at which this application is allowed especially in view of the fact that two reports of the Court Commissioners were already on record and identical application having been dismissed on 02.02.2023, the present Application ought not to have been allowed and the Trial Court ought to have commenced with final arguments and determined the suit proceedings. There is no compelling reason as observed by the Trial Court in the impugned order, save and except to state that dimensions of the wall have to be measured. This third application is allowed solely on the ground that in the previous two Court Commissioner's report, the dimensions of the wall standing on the suit property have not been measured and mentioned.

8. Mr. Patil has drawn my attention to the map prepared by the first Court Commissioner wherein the said map is to the scale of 1:500 and therefore each dimension of the suit property as also wall can be easily deciphered.

9. That apart, he has also placed copy of the Court Commissioner's report in the second instance i.e. report prepared by DSLR wherein the dimensions of the subject wall have been measured categorically as stated therein in feet and inches.

10. In that view of the matter, allowing the Application filed below Exhibit-121 is nothing but an abuse of the process of law. An arguable case has been made out for issuance of notice and stay of the measurements to be carried out by TILR in the present case, which Mr. Patil informs that has not been complied with as yet.

11. Hence, issue notice to the Respondent. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondent a copy of this order and copy of the Writ Petition and inform him about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondent is directed to file Affidavit-in-Reply to the Writ Petition on or before the next date.

12. Considering the status of the suit proceedings, this Writ Petition shall be disposed at the admission stage itself.

13. Needless to state that TILR is refrained from taking any steps pursuant to the order dated 12.01.2024.

14. Stand over to 18th March, 2024 at 02.30 p.m."

3. Today, Mr. Walvekar, learned Advocate appears for the Respondent who is the Plaintiff. He would submit that he has considered the above order and would agree in respect of the facts which are delineated in the said order. The said facts are rather admitted. It is true that the Application for Court Commissioner is filed alongwith the Suit plaint itself and it is also allowed subsequently.

4. In view of the reasons which are delineated in the above order dated 04.03.2024, the impugned order dated 12.01.2024 is unsustainable, resultantly it is quashed and set aside.

5. Both the learned Advocates would inform the Court that the Suit is at the stage of final arguments. In that view of the matter, the learned Trial Court is directed by this Court to determine the Suit as expeditiously as possible and strictly in accordance with law.

6. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay