

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7730 OF 2023

Prakash Shankar Jadhav & Ors.

.. Petitioners

Versus

Chandrashekhar Kashinath Shinde & Ors.

.. Respondents

.....

- Mr. Amit Sale for Petitioners
- Mr. Nagesh Y. Chavan for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 23, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 22.02.2024.
3. Heard Mr. Sale, learned Advocate for Petitioners and Mr. Chavan, learned Advocate for Respondents.
4. Present Writ Petition takes exception to the order dated 30.09.2021 passed by learned Trial Court whereby Application filed under O. XXVI, R. 9 of the CPC seeking appointment of the Court Commissioner in a Suit filed in 2017 for injunction and removal of encroachment came to be rejected.
5. According to Mr. Sale, Plaintiffs were originally owner of 37 R land out of which by registered deed in 1997, they sold 12 R to the Defendants. Principal grievance in the Suit is with respect to

encroachment in view of non-adherence by the Defendants to their boundaries and therefore the Suit has been filed. Application for appointment of the Court Commissioner stood rejected by the learned Trial Court on the premise that the parties have not led evidence as yet and therefore it would be premature to appoint Commissioner which would amount to collection of evidence.

6. Be that as it may considering the submissions made by Mr. Sale with respect to the fact that Plaintiffs were the original owners of the larger area, out of which a smaller area was carved out and sold to the Defendants, if there is any grievance with respect to the land held by Defendants, in the first instance, parties would be entitled to lead appropriate cogent evidence to that effect and only thereafter if the Court feels that the Commissioner is necessitated, the Court can *suo moto* on its own accord or even at the instance of the parties appoint Court Commissioner at that stage.

7. Mr. Sale would fairly submit that in view of the above facts, determination of boundaries is the principal *lis* between the parties and to that effect Plaintiffs have placed on record adequate documentary evidence in the form of the registered sale deed as also other incidental and ancillary documents pertaining to the Plaintiffs' holdings. If that be the case, it would be certainly open to the Plaintiffs to lead appropriate evidence before the learned Trial Court, if

so desired, and equally the Defendants will also be entitled to lead evidence in rebuttal, strictly in accordance with law.

8. Considering the fact that the Suit has been filed in the year 2017, learned Trial Court is requested by this Court to dispose of the Suit proceedings strictly in accordance with law as expeditiously as possible and in any event within a period of six months from today. Parties shall not insist for unnecessary adjournments and the learned Trial Court shall give adjournment only if it is utmost necessary. All contentions of the parties are expressly kept open and any opinion expressed on merits of the matter in the impugned order dated 30.09.2021 shall not influence the decision of the learned Trial Court while determining the Suit proceedings.

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

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.02.23
18:26:02 +0530