

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7544 OF 2019

Namdeo Raghoba Wagh
(since deceased) through legal heirs
Nirmala Namdeo Wagh & Ors.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

.....

- Mr. Nilesh Mohan Wable for Petitioners
- Mr. Vishwanath Patil for Respondent No. 3 – Pune Municipal Corporation
- Mr. Madhavi Tavanandi for Respondent No. 4

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 5, 2024

P. C.:

1. Heard Mr. Wable, learned Advocate for Petitioners; Mr. Patil, learned Advocate for Respondent No. 3 and Ms. Tavanandi, learned Advocate for Respondent No. 4.

2. Present Writ Petition takes exception to the order dated 15.02.2019 passed by learned Trial Court in Application below Exh. 346 in RCS No. 141 of 1992 whereby the Application preferred by Petitioners / Plaintiffs for appointment of Court Commissioner came to be rejected.

3. It is seen that substantial portion out of the suit property belonging to the Plaintiffs was acquired for a public purpose by

Respondents by following the due process of law prior to the filing of the Suit. Plaintiffs have also filed Application below Exh. 291 earlier, *inter alia*, raising dispute of boundaries. Plaint stood amended thereafter and in view of amendment to the Suit plaint, Plaintiffs now also claim additional relief for removal of encroachment. In that view of the matter, Plaintiffs after a hiatus of almost 30 years filed Application below Exh. 346 on 25.01.2019 for appointment of City Survey Officer as Court Commissioner to remeasure and prepare a map of the Suit properties. That Application came to be rejected by virtue of the impugned order. Admittedly the suit properties are in public use now at present.

4. Before I advert to the impugned order, it is seen that averments in the Suit plaint itself are based on a map prepared by the City Surveyor which has been referred to and relied upon by the Plaintiffs themselves in support of their case. It is seen that the said map has been drawn to a scale. Learned Trial Court while considering the Application below Exh. 346 assigned cogent reasons for rejection of the Application. One of the principal reason being that the map annexed to the Suit plaint has been drawn to a scale and a similar Application in the past below Exh. 291 was already rejected by the learned Trial Court. One of the principal grievance of the Plaintiffs is that even after taking into consideration the areas shown on the sketch

/ map annexed to the plaint having been acquired, some area out of the said suit property still remains in balance which is encroached upon by the Defendants. If that be the position, it shall certainly be open to the Plaintiffs to prove the same when they step into the witness box and lead evidence in support of their case. All contentions of the Plaintiffs in that regard are therefore expressly kept open including reliance of the Plaintiffs on the sketch / map annexed to the Suit plaint which has been commented upon by the learned Trial Court in the impugned order while dismissing the Application. In view of the above, I do not find any reason to interference with the impugned order. Order dated 15.02.2019 is therefore sustained.

5. In view of the fact that the Suit is of the year 1992, learned Trial Court is requested by this Court to dispose of R.C.S. No. 141 of 1992 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. Trial Court shall not give any adjournments unless it is utmost necessary and only if there is an emergency. All contentions of the parties are expressly kept open. Parties shall appear before the learned Trial Court tomorrow i.e. on 06.03.2024 at 2:30 p.m. for seeking directions in the Suit.

6. Needless to state that any stay granted by this Court in the present Writ Petition stands immediately vacated.

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

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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