

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8072 OF 2022

Devidas Gulab Tanpure and Ors. .. Petitioners

Versus

Balasaheb Shivram Tanpure and Ors. .. Respondents

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- Ms. Bhagyashri Mangale i./by Prachiti Deshpande, Advocate for Petitioners.
- Mr. V. B. Konde Deshmukh a/w. Mr. Rohin Chauhan, Advocate for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 12, 2024

P.C.:

1. Heard Ms. Mangale, learned Advocate for Petitioners and Mr. Deshmukh, learned Advocate for Respondent No.1.

2. In view of the twin orders passed by this Court on 27.03.2024 and 04.04.2024 and the fact that the Court Commissioner has already carried out the survey and measurement in respect of the suit property, all that now remains to be determined is whether parties should be given a copy of the report since the Regular Civil Appeal No.213 of 2021 is pending before the District Court.

3. I am of the opinion that appropriate directions should be passed for determination and decision in the aforesaid Regular Civil Appeal No.213 of 2021 within a time bound programme so as to enure to the benefits of both the parties.

4. In view of the above, it is directed that proceedings in execution shall be stayed until the learned District Court disposes of Regular Civil Appeal No.213 of 2021 which is directed to be disposed of within a period of three months from today. Parties are directed not to take any unnecessary adjournments and co-operate with the learned Appellate Court. Appellate Court is directed to give adjournments only if they are utmost necessary. While disposing of the Appeal if either of the parties decide to proceed or take up any interlocutory application relating to the fact of partition the same is allowed to be filed and the learned District Court shall take the same into cognizance with respect to the rights of the parties which have been determined by the learned Trial Court in the decree and decide it in accordance with law.

5. It is clarified that contentions of both the parties are kept expressly open before the Appellate Court especially in view of the fact that there are more than 11 substantive immovable suit properties which are the subject matter of partition in the present suit proceedings.

6. Learned Appellate Court is also given liberty to consider the Commissioner's report if so desired or required either *suo motu* or on the Application made by either of the parties so as to consider the same, if any dispute arises with respect to the boundaries and

measurement of the suit properties claimed by the parties.

7. It is directed that the Court Commissioner who has prepared the report shall submit the said report to the Appellate Court in Regular Civil Appeal No.213 of 2021 for consideration within a period of two weeks from today. If the said Commissioner report is considered by the Appellate Court, then copies of the same shall be given to the concerned parties to enable them to address the learned District Court in the Regular Civil Appeal proceedings.

8. In view of the above, impugned order dated 25.04.2022 is sustained since it is already been worked out and accordingly Petition is disposed.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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