

WRIT PETITION NO. 10499 OF 2015

Sahebrao Madhav Kanchan and Ors. .. Respondents

- Mr. Ravindra S. Pachundkar, Advocate for Petitioners.
- Mr. Vishwanath Suresh Talkute, Advocate for Respondent Nos.1, 3, 7, 15 and 17.

DATE : FEBRUARY 07, 2024.

P.C.:

- 1.** Heard Mr. Pachundkar, learned Advocate for Petitioners and Mr. Talkute, learned Advocate for Respondent Nos.1, 3, 7, 17 and 17.
- 2.** After allowing Civil Applications, Writ Petition is taken up for hearing forthwith.
- 3.** In the present case, it is seen that the Suit before the learned Trial Court is Regular Civil Suit No.1848 of 2013. The Suit is filed for declaration and perpetual injunction. Present Writ Petition impugns the order dated 28.01.2015 passed in Application below Exhibit “115” in RCS No.1848 of 2013 which is at Exhibit “H” - page No.85 of the Writ Petition.
- 4.** Plaintiffs filed the Application for appointment of Court

Commissioner. The Suit property is the ancestral property and it is claimed by Plaintiffs. The Suit property has been allotted to the Plaintiffs by a registered partition deed. It is seen that the dispute between the parties pertains to boundary dispute. It is averred by the Plaintiffs that the property situated to the northern side of the Suit property belonging to Defendant No.1 was sold and conveyed by Defendant No.1 to the remaining Defendants, but at the time of the said transaction, Defendant No.1 had not carried out measurement of the Suit property. It is averred by the Plaintiffs that Defendant No.1 had assured the Plaintiffs that if any encroachment is found over the Suit land / property belonging to the Plaintiffs he will rectify the same. It is averred that the Plaintiffs have got the Suit property / land measured on 04.02.2013 and pursuant to that measurement, it is found that the Defendants have encroached upon the Suit property. Hence Plaintiffs have filed the present Suit for declaration and perpetual injunction against the Defendants.

5. It is also revealed from the record that the Defendants have objected to the measurement carried out by the Plaintiffs on 04.02.2013. According to Defendants, they are in possession of the Suit property. Defendants have also averred that they have undertaken construction activity. There is also dispute between the parties with respect to the precise division of the old survey number recorded in respect of Gat No.832 as also the revenue record

pertaining to the same and the consolidation scheme being defective as averred by the parties. The aforesaid issues are disputed questions of facts.

6. In view of the above, Application filed by the Plaintiffs stands rejected by the learned Trial Court on the ground that appointment of Court Commissioner would amount to collection of further evidence. Considering the dispute asserted by the Plaintiffs and denied by the Defendants which is evident from the pleadings on record, I am of the opinion that the stand adopted by the learned Trial Court in rejecting the Application for appointment of Court Commissioner at this stage is clearly appropriate and hence no interference is warranted in the order passed below Exhibit “115”.

7. However without delineating and opining on any merits of the impugned order as also the submissions made by both the respective parties, the impugned order is sustained.

8. However, it is clarified that any observations and findings in the impugned order shall not influence the decision of the Trial Court in the Suit proceedings. It is seen that the observations and findings returned in the impugned order are clearly *prima facie* in nature. Hence all contentions of the Plaintiffs as also the Defendants are expressly kept open to be proven by each of the parties by leading cogent evidence with respect to their right, title and entitlement in

their respective lands. After putting the suggestion that this Court shall immediately expedite the adjudication of Regular Civil Suit No.1848 of 2013 within a time bound programme, learned Advocates after taking instructions have agreed to the same.

9. In view of the above directions and observations, learned Trial Court is directed to dispose of Regular Civil Suit No.1848 of 2013 within a period of six months from today.

10. Parties to the Suit proceedings are directed by this Court not to seek any unnecessary adjournments to the parties unless it is utmost necessary due to any emergency / exigency.

11. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

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

[MILIND N. JADHAV, J.]

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