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

WRIT PETITION NO. 2907 OF 2023

Bhanudas Dharu Ghawate

.. Petitioner

Versus

Nilesh Shivajirao Latambale and Ors.

.. Respondents

-
- Mr. Narayan S. Pawar, Advocate for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2024.

P.C.:

- 1.** Heard Mr. Pawar, learned Advocate for the Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 26.05.2022 passed in an Application filed by the Defendants for appointment of Court Commissioner under Order XVI Rule 9 of the Code of Civil Procedure, 1908.
- 3.** Though the Application was resisted by the Petitioner / Plaintiff, the Application came to be allowed and the Taluka Inspector of Land Records, Shirur (for short “**TILR**”) was appointed as Court Commissioner to measure land bearing Gat Nos.1072, 1073 and 1074 and further directed to fix the boundaries and show the existence of the right of way as per the record.

4. At the outset, Mr. Pawar would submit that the directions contained in the impugned order have been complied with and carried out save and except submission of the detailed report by the TILR before the learned Trial Court. In effect, he would submit that the commission has been carried out, land has been measured and now all that awaits is the final report. According to his instructions, the final report is not submitted before the learned Trial Court as yet.

5. It is seen that the Suit proceedings filed by the Petitioner / Plaintiff is for injunction. Mr. Pawar has drawn my attention to paragraph No.5 and the averments made in the Suit plaint wherein the description of the subject three suit plots as also the status of holding has been stated. Plaintiff claims entitlement and possession of Gat No.1074 and is vary of the encroachment by the adjacent holders of land from Gat Nos.1072 and 1073.

6. In that view of the matter, the Suit proceedings have been filed by the Plaintiff. Considering the case of the Plaintiff, the learned Trial Court by its order dated 06.04.2022 granted interim status quo in favour of the Plaintiff so as to ensure that the possession of the Plaintiff is not disturbed. Defendants thereafter appeared before the learned Trial Court and filed their written statement. Thereafter, it is seen that on 30.04.2022, the Defendant filed Application for appointment of Court Commissioner below Exhibit "51". The said Application was

considered on merits *qua* the reliefs prayed for in the Suit plaint as also the order passed below Exhibit “5” and was allowed giving various directions to the Court Commissioner.

7. As noted above and as submitted by Mr. Pawar, the Commissioner has already carried out the exercise of measurement and only the detailed report is awaited.

8. Mr. Pawar would now submit by interjecting the Court that considering the lapse of time, there is a possibility of the measurement report being filed before the Trial Court, but he has no instructions about same.

9. Be that as it may, considering the relief prayed for in the Suit proceedings as also the fact that the Commissioner has carried out the exercise of measurement, it would be trite if the Commissioner has submitted his report to the learned Trial Court, then copy of the said report shall be given to all the parties before the learned Trial Court. There is every possibility that after considering the report of the Commissioner, the learned Trial Court would be in an appropriate position to dispose of the entire Suit proceedings or the Exhibit “5” Application wherein the Trial Court has already granted the order of status quo on 06.04.2022. I leave that to the discretion of the learned Trial Court depending upon acceptance of the Court Commissioner’s Report by the learned Trial Court.

10. In view of the above, the present Writ Petition is disposed by directing the Trial Court to maintain continuance of the order dated 06.04.2022 until the disposal of Exhibit “5” Application filed by the Plaintiff before the Trial Court in the Suit proceedings / or the Suit proceedings itself.

11. Today, when the matter was listed on board and called out, there is remark that the service is awaited. The order passed today would enure to the benefit of all parties to the Suit. Hence despite non-appearance of Respondents, to expedite the Suit, I am inclined to determine the present Petition.

12. In view of the above, Writ Petition is disposed of with a direction to the learned Trial Court to dispose of Regular Civil Suit No.140 of 2022 within a period of 8 months from today strictly in accordance with law by adhering to the directions contained in paragraph No.10 above. All contentions of the parties are expressly kept open.

[MILIND N. JADHAV, J.]

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