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

WRIT PETITION NO. 916 OF 2024

Banderao Pundalik Patil (Mane)

.. Petitioner

Versus

~~Nitin Bhivaji Naik~~

Since Deceased through its legal heirs

Sameer Nitin Naik and Ors.

.. Respondents

- Mr. Rohan Sawant a/w. Mr. Rushikesh R. Chavan, Advocates for
Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 22, 2024.

P.C.:

- 1.** Heard Mr. Sawant, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order passed in the Application filed below Exhibit “60” in Regular Civil Suit No.129 of 2013. By virtue of this Application appointment of Court Commissioner was sought for by Plaintiff. Suit is filed for declaration, injunction and removal of encroachment. Application was resisted by Petitioner being Defendant in the Suit on the ground that a similar Application was preferred originally when the Suit was filed in the year 2013 and that Application was rejected. The said order is at page No.45 of the Writ Petition.

3. However, Mr. Sawant would fairly submit and concede that the Suit was amended subsequently to include the prayer for removal of encroachment and in that view of the matter, the fresh Application was filed below Exhibit “60” seeking appointment of Court Commissioner.

4. I have perused the impugned order. The order allows Application filed below Exhibit “60” and gives a direction to the Taluka Inspector of Land Records (for short “**TILR**”), Ambegaon Budruk, Taluka Haveli, District Pune to carry out measurement of the Suit property as mentioned in the Application. Certain other directions are also given in the operative part of the order under clauses 3 to 6 therein which are not only necessary but equally important.

5. *Prima facie*, I do not find any reason as to why this Court should interfere with the order, considering that the TILR is a Government Officer having been appointed as Court Commissioner to carry out measurement of the Suit property, especially in view of the specific prayer for removal of encroachment.

6. Mr. Sawant would submit that while carrying out the measurement of the Suit property, appropriate directions be passed by this Court to direct the TILR to take into consideration the sale deeds dated 12.01.1988 and 22.02.1994 between the parties including the documents submitted by the parties. In so far as the submissions of Mr.

Sawant is concerned, adequate directions given by the learned Trial Court to the TILR to take into consideration the documents submitted by the parties is enough. No specific directions are required for consideration of sale deeds. He is not supposed to adjudicate. Hence, no specific clarification is now required to be given by this Court.

7. Mr. Sawant has raised a further grievance that the TILR as per the directions given by the learned Trial Court will carry out measurement of the Suit property as mentioned in the Application and the Petitioner who is Defendant before the Trial Court therefore has a grievance. He would submit that the documents available with the Petitioner should also be considered by the TILR in so far as the concerned Suit property is concerned and it should not be restricted only for the Suit property described in the Application. All parties shall show their respective title documents with the boundaries regarding the Suit property and if the TILR desires he can ask for the copies to enable him to prepare a proper Report.

8. This apprehension expressed by Mr. Sawant is also infact taken care of when the learned Trial Court has given specific directions under clause 5 that the TILR shall take into consideration the documents submitted by the parties and hence no further clarification is required to be given.

9. Needless to state that either of the parties shall be at liberty to challenge the Court Commissioner's Report strictly in accordance with law or if so required can call the concerned Court Commissioner to prove the Report strictly in accordance with law if so permissible.

10. With the above directions, the impugned order dated 29.11.2023 is sustained.

11. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
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