

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 918 OF 2024

Yatin Arun Doshi & Anr.

.. Petitioners

Versus

Subhash Pirappa Lambture & Anr.

.. Respondents

-
- Mr. Swaroop M. Karade for Petitioners
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 22, 2024

P. C.:

1. Heard Mr. Karade, learned Advocate for Petitioners.
2. Perused the impugned order dated 07.11.2023. The only contention which appeals to the Court as raised by Mr. Karade is that in the Suit filed for removal of encroachment, the Application for appointment of the Court Commissioner is preferred when the Plaintiffs' cross-examination is under progress. *Prima facie* considering the Suit proceedings and the relief prayed for therein, allowing the Application of the Plaintiffs would enure to the benefit of the parties as also the learned Trial Court. However, the only point made by Petitioners to this Court is the stage at which the Application is made and also allowed by the learned Trial Court. This is a Suit which is specifically praying for removal of encroachment only and nothing more. In the said Suit filed in 2014 at the very first instance

such an application for appointment of Court Commissioner ought to have been made by the parties. My attention is drawn to the averments made by Plaintiffs in paragraph No. 4 of the Suit plaint. Averments are to the effect that in 2013, an elaborate exercise of determining the boundaries of the Plaintiffs' suit properties was carried out by the Competent Authority in accordance with law and the boundaries were determined as per the Mojani Register No. 141 of 2013. If this be so, the fresh exercise is not to be ordered unless there is any discrepancy pointed out in the earlier exercise. This is not the case however in paragraph No. 4 of the Plaint.

3. An arguable case has been made out by Mr. Karade. Hence, issue notice to the Respondents made returnable on 05.02.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Petition along with copy of this order to the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

4. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date.

5. In view of this order, the impugned order stands stayed and until the present Writ Petition is decided, no further steps in view of

the impugned order shall be taken by the Trial Court or the parties or the Court Commissioner.

6. Stand over to 5th February, 2023.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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