

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5946 OF 2024

Govind Shankar Pednekar

Petitioner
.. (Original Plaintiff)

Versus

Satyavan Ramchandra Pednekar and Ors.

Respondents
.. (Original Defendants)

-
- Mr. Vikram N. Walawalkar, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 26, 2024

P.C.:

- 1.** Heard Mr. Walawalkar, learned Advocate for Petitioner.
- 2.** He has drawn my attention to the impugned order dated 11.09.2023 passed below Exhibit-21 filed in the year 2022. It is seen that preliminary decree was passed in the year 2006. Final decree was set in motion but before the same could be passed, sometime in the year 2016 after obtaining permission from the Gram Panchayat, the Writ Petitioner – Plaintiff has constructed his house on the undivided suit property. He claims to have built the house on his $\frac{1}{2}$ share which is refuted by the Respondents i.e. Defendants whose case has been accepted by the Trial Court.
- 3.** It is only when Defendants filed Application seeking appointment of Court Commissioner to demarcate the suit property, Writ Petitioner – Plaintiff filed the present Application in the year 2022

stating that the structure which he has constructed according to the Plaintiff over his $\frac{1}{2}$ share in the suit property is on a completely different property altogether. However, the learned Executing Court has rejected the Application.

4. Mr. Walawalkar would submit that before appointment of the Court Commissioner, it is important to determine as to whether the Writ Petitioner – Plaintiff has infact constructed his structure on $\frac{1}{2}$ share or otherwise.

5. *Prima facie*, I am of the opinion on reading the Application filed by the Writ Petitioner that the Plaintiff is resisting appointment of Court Commissioner. Considering that the preliminary decree was in respect of partition of the suit property, both parties would require the suit property to be demarcated according to their respective shares. However, in view of the issue raised by the Writ Petitioner regarding existence of his constructed house since 2016 onwards, I deem it fit to issue notice to Respondents and after hearing Respondents, only appropriate orders can be passed.

6. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of the Writ Petition 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. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date.

7. Stand over to 10th May, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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Date:
2024.04.26
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