IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19243 OF 2024

Ganpat Vitthal Landage ...Petitioner

Versus

Ananda Sayaji Landage and ors. ...Respondents

Mr. Ratanrao Uded, for the Petitioner.
Mr. V. Tadake, a/w Pratiksha Keni, for the Respondents.

SANTOSH SUBHASH KULKARNI

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CORAM: N. J. JAMADAR, J.
DATED: 20th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioner.

2. The challenge in this petition is to an order dated 9th September, 2024 passed by the learned Civil Judge, Senior Division, Pune, whereby the Deputy Superintendent of Land Records, has been appointed as a Court Commissioner to measure the suit property and submit a report to the Court.

3. The learned Civil Judge was of the view that the question as to whether the defendant had made encroachment over the portions of the suit property and the identification of the property arise for adjudication in the suit and it was, therefore, necessary to appoint the Court

Commissioner to measure the suit property and submit a report.

4. The learned Counsel for the petitioner submitted that at the nascent stage, when the defendant has only filed written statement and issues were not settled, the Court could not have appointed the Court Commissioner. Reliance was sought to be placed on a judgment of this Court in the case of ***Shantaram Dattatray Kekan and ors. vs. Bhausaheb Karbhari Kekan and ors.***[1] to buttress the submission that the Court Commissioner cannot be appointed at the initial stage so as to collect evidence.

5. In the instant suit, in paragraph No.1 of the plaint itself, the plaintiff has asserted that the defendant has committed encroachment over the portion of the suit property and sought the relief of possession. Thus, the impugned order cannot be faulted at on the ground that the appointment of Court Commissioner was sought for the purpose of collection of evidence.

6. The learned Counsel for the petitioner then urged that in the prayer clause of the plaint, the plaintiff had prayed for the appointment of the Court Commissioner as a final relief.

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1 (2023) 1 ALL MR 437.

Thus, the said prayer could not have been granted at an interim stage. The Code of Civil Procedure envisages supplementary proceedings to assist the Court in final adjudication of the dispute. Merely because there is a prayer in the suit that a Court Commissioner be appointed does not imply that the Court cannot exercise the power under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

7. Since the allegations are that of encroachment and erection of the structures over the property, allegedly belonging to the plaintiff, the impugned order advances the cause of elucidation of matters in controversy and may assist the Court in arriving a just decision of the case. Thus, no fault can be found with the impugned order.

8. The petition stands dismissed.

[N. J. JAMADAR, J.]