

MHKO050043612019



ORDER BELOW EXH.34 IN
SPECIAL CIVIL SUIT NO.107/2023
(Passed on 07. 11. 2024)

Perused the application and reply thereon. Heard learned counsel for both sides.

02. Learned counsel for the defendant nos.4 and 5 submitted that plaintiff has amended the plaint after the passing of order by the Hon'ble Bombay High Court regarding maintaining the order of appointment of court commissioner. By way of said amendment, plaintiff has pleaded that he has measured the suit property through an engineer and it was found that there is an encroachment on 1298.71 sq.mt. area of the suit property. As such, in the said changed circumstances of the case, it is not necessary to appoint the court commissioner for the purpose of measurement of the suit property. Hence, it is prayed to set aside the order of appointment of court commissioner passed at Exh.5.

03. Application is resisted by the plaintiff vide its reply at Exh.42. It is submitted that plaintiff has amended the plaint to give better particulars regarding the alleged encroachment which cannot be a ground to set aside the order of appointment of court commissioner which is affirmed by Hon'ble Bombay High Court. Accordingly, it is prayed to reject the application.

04. It is undisputed that order of appointment of court commissioner passed at Exh.5 was challenged before Hon'ble Bombay High Court vide Writ Petition (ST) No.93244 of 2020. It is also undisputed that Hon'ble Bombay High Court has affirmed the said order. In these circumstances, setting aside the said order would be against the judicial propriety. Moreover, as the plaintiff is claiming that defendant has encroached upon the suit property, said dispute needs to be adjudicated with the help of cadestral surveyor. As such, merely because plaintiff has amended the plaint thereby specifying the exact area of encroachment, it cannot be a ground to set aside the order of appointment of court commissioner to carry out the measurement of the suit property.

05. In view of the aforesaid facts and circumstances of the case, application is devoid of any merit. Hence, application is liable to be rejected. Hence, I pass the following order :

ORDER

- 1) Application at Exhibit No.34 is hereby rejected.
- 2) Cost on applicant.

Ichalkaranji
Date :- 07. 11. 2024

(Hitendra Urmila Anilkumar Wani)
Civil Judge Senior Division, Ichalkaranji