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| MHKO080002892022  | <u>ORDER BELOW EXH.30 IN REGULAR CIVIL APPEAL NO.10/2022</u> <u>(Ajit Pandurang Kesarkar Vs. Shantabai Bhairu Kamble)</u> |
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1. Present application is filed to stay the proceeding of this appeal till the report of Court Commissioner in Regular Civil Suit No. 178/2018, pending before learned Civil Judge Senior Division, Gadhinglaj.
2. Learned advocate for the appellant submitted that in Regular Civil Suit No.178/2018, the application was made to appoint the Court Commissioner to find out whether there is any encroachment present in the suit property. If after the Court Commissioner inspection, if any encroachment is found in the suit property, it will be helpful for the appellant in this matter. Therefore, till the report of Court Commissioner appeal may be stayed. The report of Court Commissioner is useful to the appellant to decide this appeal. Hence, the application may be allowed.
3. Learned advocate for the respondent submitted that said suit and present appeal are for the different purpose. Suit properties are also different. The appellant was having an opportunity to file an application for measurement and find out the encroachment before the Trial Court. Said remedy was not availed by the appellant at that time. Therefore, now he is not entitled to rely on any other evidence without following the procedure. Hence, the application may be dismissed.
4. The appellant failed to submit what is the stage of Court Commissioner. Also there is no sufficient material to come to the

conclusion that suit property in both the proceeding is same. The respondent in Regular Civil Suit No.178/2018 are different than the respondent in present case. It shows that the cause of action is also totally different. Also if the appellant wanted to prove any kind of encroachment on the basis of evidence of Court Commissioner, the appellant is not entitled to do it. It is because the appellant got sufficient opportunity to lead the evidence when the trial proceeded before the Trial Court. There is no application filed under order 41, Rule 27 of Code of Civil Procedure to lead additional evidence. Merely, Court Commissioner was issued in said case is not a ground to stay the proceeding. Therefore, the application is not entitled to be allowed. Hence, following order is passed.

ORDER

The application is dismissed.

Date : 25/09/2025

(Onkar R. Deshmukh)
District Judge-1, Gadhinglaj