

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2647 OF 2015

SHAIKH DADU SHAIKH SARDAR  
VERSUS  
SHAIKH UMER SHAIKH SARDAR, LRS JUBEDABI AND OTHERS

...  
Advocate for Petitioner : Shri Navandar Gopal C.

...  
CORAM : RAVINDRA V. GHUGE, J.  
Dated: March 10, 2015

...

PER COURT :-

1. I have heard Shri Navandar, learned Advocate on behalf of the petitioner plaintiff for quite some time.
2. The petitioner has instituted RCS No.12 of 2011 which is pending adjudication before the trial Court. An application Exhibit 87 was preferred by the petitioner seeking appointment of a Court Commissioner. By the impugned order dated 4.2.2015, application Exhibit 87 has been rejected by the trial Court, concluding therein that the prayer made by the petitioner is in fact aimed at collecting evidence to prove the various disputed questions between the parties.
3. Contention of the petitioner is that application Exhibit 87 has been filed after the petitioner was cross-examined. It is in the light of the contentions of the respondent / defendant that application Exhibit 87 was filed so as to clear doubts about the suit property and its use. The Court Commissioner could have considered the aspects prayed for in Exhibit 87

and he could have submitted a report throwing light upon the areas of dispute between the parties.

4. Having considered the submissions of the learned Advocate, I have gone through application Exhibit 87, the say of the defendants and the impugned order.

5. It is not in dispute that the petitioner has prayed for the appointment of Court Commissioner to look into the following issues:-

*(a) How much is the area adjacent to the property of the petitioner admeasuring 77 x 54 sq. ft. ?*

*(b) Whether the cattle and agricultural equipments of defendant No.1 are stored in the premises adjacent to the property of the petitioner ?*

*(c) How much is the area of the residential premises House No. 3-1-58, occupied by the litigating sides ?*

*(d) Whether the son of defendant No.1 operates his garage and in how much area ?*

6. The trial Court has concluded that the above aspects which find place in the prayer clause in Exhibit 87, cannot be investigated or looked into by appointing a Court Commissioner as it would amount to collecting evidence. Having considered the pleadings and prayers made in Exhibit 87, I do not find that the trial Court has committed any error in passing the

impugned order date 4.4.2015.

7. In the light of the above, this petition sans merits and is, therefore, dismissed.

( RAVINDRA V. GHUGE, J. )

...

akl/d