

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8936 OF 2014

Hanumant Bhaurao Suryawanshi ..PETITIONER

VERSUS

Navnath Yashwantrao Sathe ..RESPONDENT

Mr E.S. Murge, Advocate for petitioner;
Mr S.S. Choudhari, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORAL ORDER :

By this writ petition, the petitioner/original defendant seeks to challenge the order dated 6th August, 2014, passed by Joint Civil Judge Senior Division, Osmanabad, below Exh.83, Special Civil Suit No.73 of 2010, whereby his prayer for appointment of Court Commissioner, came to be turned down.

2. In the aforesaid suit, the petitioner/defendant moved an application under Order XXVI, Rule 9 of the Code of Civil Procedure, seeking appointment of Court Commissioner. Upon hearing the parties, the learned Trial Court has rejected the said application. Thus, the present petition.

3. Learned Counsel appearing on behalf of the petitioner/defendant would urge that with a view to verify the nature of construction over the suit property, the application for appointment of Court Commissioner was moved. He would urge that the issues framed in the suit cast burden on the defendant to prove his possession adverse to the respondent/plaintiff. According to him, one of the aspects which is necessary for establishing the fact that, his possession is adverse to the plaintiff, is by pointing out that he has constructed the house on the suit property and is in settled possession of the suit property and his possession is adverse to the plaintiff. He would urge that the Trial Court has wrongly rejected the claim for appointment of the Court Commissioner and, therefore, the order impugned herein deserves to be quashed and set aside.

4. Mr Choudhari, learned Counsel appearing on behalf of the respondent supported the impugned order and prayed for dismissal of the instant writ petition.

5. Having dwelt upon the controversy involved in the present petition, it is noticed that the suit filed by the respondent/plaintiff is for declaration of ownership and perpetual injunction.

6. The Trial Court has framed issues at Exh.18 and except issue no.6, the remaining issues are required to be proved by the plaintiff. Issue no.6 is in relation to adverse possession.

7. Perusal of the application at Exh.83 depicts that the petitioner/defendant claims that he has carried out construction over the suit property and since 1990 he is in possession of the same. For discharging the burden and for proving issue no.6, in my opinion, it is not necessary for the petitioner to take recourse to the provisions of Order XXVI, Rule 9 of the Code of Civil Procedure, i.e. for appointment of Court Commissioner as the petitioner can independently establish the said fact by adducing cogent evidence to that effect. The learned Trial Court has rightly dwelt upon the said controversy and has rejected the claim of the petitioner.

8. In the light of what has been stated above, no case for interference is made out. The writ petition, therefore, stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj