

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1483 OF 2010

Vasant A. Yadav	..	Petitioner
VS.		
Vilas A. Yadav & Ors.	..	Respondents

Mr. Umesh R. Mankapure for Petitioner.
Mr. N. J. Patil for Respondent No. 1.
Mr. Sachin Joshi for Respondent No. 8.

CORAM : M. S. SONAK, J.
DATE: 24 MARCH 2015

P.C. :-

1] This petition challenges the order dated 14 October 2009 made by the Civil Judge, Senior Division at Sangli, appointing a Court Commissioner primarily for the purposes of taking inventory of the property mentioned in the application as well as Exhibit '1' and to submit a detailed report.

2] Mr. Mankapure, the learned counsel for the petitioner submits that the impugned order ignores the parameters prescribed under Order 39 Rules 7 and 8 of the Code of Civil Procedure, 1908. The impugned order virtually enables the respondents to collect evidence in a partition suit, which is by no means the proper object for appointment of the Court Commissioner. On this ground, Mr. Mankapure submits that the impugned order is liable to be interfered with.

3] Having perused the impugned order as well as the record, it is clear that the impugned order merely appoints a Court Commissioner for the purposes of taking an inventory of the properties referred to in the application and in Exhibit '1'. In this case, the properties are located within the territorial limits of two States. There is also the issue of language. Basically, in order to assist in the progress of the suit, the Court Commissioner has been appointed with directions only to take the inventory of the properties. This is not a case where the Commissioner can be said to have been appointed for the purposes of gathering of evidence for or on behalf of any of the parties to the suit.

4] It is also not a case where it can be said that the learned Civil Judge has not been alive to the parameters prescribed under Order 39 Rules 7 and 8 of the CPC. Order 39 Rule 7 of the CPC permits making of such order for the purposes of inspection or taking of inventory.

5] Accordingly, there is no jurisdiction error or perversity in the making of the impugned order. This petition is dismissed. There shall be no order as to costs.

6] At this stage, Mr. Mankapure, requests that the interim relief granted by this Court as against the operation of the impugned order be continued for a period of further six weeks from today. The request is reasonable and accordingly the interim relief is continued for a period of six weeks from today.

(M. S. SONAK, J.)

Chandka