

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 784 OF 2014

Narayan S/o. Chintuji Umathe,
Aged about 75 years, Occu : Nil,
Resident of Jatpura Ward No.1, Chandrapur,
Tehsil and District : Chandrapur.

.... **PETITIONER.**

// **VERSUS** //

Sau. Noor Jahan Banu Usma Khan,
Aged about 45 years, Resident of Dargah
Ward, Ward No.54, Ghutkala, Chandrapur,
Tehsil & District : Chandrapur.

.... **RESPONDENT.**

Shri A.R.Patil, Advocate for Petitioner.
Shri Anand Deshpande h/f. Shri F.T.Mirza, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : SEPTEMBER 02, 2015.

ORAL JUDGMENT :

1. Heard.
2. Shri Patil, the learned advocate for the petitioner submits that as per the information received by the petitioner, the respondent has sold the

suit property, however, the petitioner has not been able to get the details of the purchaser. A request for adjournment was made on behalf of the petitioner to file appropriate application, however, considering the nature of the controversy, I have refused the adjournment.

3. **RULE.** Rule made returnable forthwith.

4. The petitioner/ plaintiff has filed this petition challenging the order passed by the trial Court rejecting the application (Exh.58) praying for appointment of Commissioner to submit the report after undertaking the spot inspection of the suit property. It is the contention of the petitioner that the dispute is regarding identification of the Plot Nos. 1 and 14 which are subject matter of the civil suit and looking to the nature of the dispute, the petitioner filed application (Exh.58) for appointment of the Taluka Inspector of Land Records as the Court Commissioner so that he can inspect the spot and submit report and being an expert, his report would assist the Court in appreciating the controversy properly and for identification of the suit property.

5. Shri Deshpande, learned advocate for the respondent has submitted that the appointment of the Court Commissioner is not required as there is no dispute regarding the boundaries. It is further submitted that the application has been filed by the petitioner after his evidence is recorded and the petitioner cannot be permitted to fill up the lacunae.

6. After considering the submissions made by the respective parties, in my view, the application filed by the petitioner is required to be allowed. This Court has repeatedly dealt with the matters relating to the appointment of the Commissioner and it is said that the appointment of Commissioner assists the Court in adjudicating the controversy. Looking to the nature of the controversy, the appointment of Taluka Inspector of Land Records who is officer from the Revenue Department, would assist the Court to give decision on the issue relating to identification of the plots.

7. Hence, the following order :

- i. The impugned order is set aside.
- ii. The application (Exh.58) filed by the petitioner is allowed.
- iii. The learned trial Judge is directed to appoint the Taluka Inspector of Land Records, Chandrapur as Court Commissioner for submitting the report after spot inspection.
- iv. The learned trial Judge shall pass appropriate orders regarding the charges/fees for the execution of the Court Commission and directing the parties to remain present at the time of execution of the commission.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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