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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4092 OF 2014

Prabhuappa s/o Mogalappa Nagthane PETITIONER
Age - 65 years, Occ - Agriculture
R/o Eerendeshwar, Taluka - Purna
District - Parbhani

VERSUS

Syed Fayaz Ali s/o Sayed Hussain Ali RESPONDENTS
Age - 51 years, Occ - Labour,
R/o Nutan Nagar,
Parbhani

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Mr. Sudarshan J. Salunke, Advocate for the petitioner
Mr. G. R. Syed, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.
2. This is a writ petition fled by original defendant in regular civil suit No. 275 of 2011 wherein his request for appointment of court commissioner pursuant to Order XXVI, Rule 9 of the Civil Procedure Code has been rejected.
3. Both the learned advocates agree upon that the suit has not proceeded further save and except filing of affidavit of

examination of chief of the plaintiff.

4. The dispute appears to be allotment of plot No.46 to the parties by the housing society. The descriptions of the parties in respect of plot No.46 are different.

5. Learned advocate for the petitioner refers to a judgment in the case of “*Vasant Tukaram Prabhu V/s Xalinibai Borcar Alias Shalinibai Borkar*” reported in 2014 (4) ALL MR 726. According to him, present situation stands covered by the observations as are appearing under paragraph No.23 of the judgment.

6. Having regard to the stage at which the application had been moved, I deem it appropriate not to meddle with the impugned order for the reason that upon evidence, if it occurs to the parties that appointment of court commissioner would be necessary to resolve the dispute properly, in such a case, such an attempt can always be resorted to, to be decided by the court taking into account facts and circumstances involved and law.

7. Writ petition, as such, stands disposed of. Rule is discharged.

[SUNIL P. DESHMUKH, J.]