

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 6660 OF 2016

Shantabai Digambar Rathod ... Petitioner
Versus
Vitthal Roopsing Chavan ... Respondent

.....
Mr. Ravindra V. Gore, Advocate for petitioner
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 28th JUNE, 2016

ORDER :

1. Heard learned counsel for the petitioner.
2. Learned counsel for the petitioner-original defendant contends that it has been specifically pleaded that there is a wall between property of respondent - original plaintiff and petitioner - defendant. In such a situation, appointment of court commissioner was sought to elucidate the situation. However, said request has been turned down by the trial court under impugned order dated 2nd April, 2016.
3. Learned counsel fairly points out that impugned order in paragraph 9 has recorded the reasons as to why request has been declined, referring to case of *Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others* reported in 2001(2) Mh.L.J. 959.

4. Perusal of the order, particularly paragraph 10, shows that it is not a case wherein the request at this stage can be considered for being granted. The court has given reason that the defendant is yet to lead her evidence and since the application is made before the same, it may tantamount to collection of evidence by appointment of Commissioner, which is not possible.

5. Having regard to aforesaid, the order does not appear to be unreasonable, and as such would not require interference at this stage. As observed above, the petitioner after evidence if it may necessitate to make a similar request, it would be open for petitioner to make such a request to be decided by the court on its own merit.

6. Writ petition, as such, with aforesaid observations, stands disposed of.

(SUNIL P. DESHMUKH, J.)

sms