

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

958 WRIT PETITION NO. 10105 OF 2016

SAHABAI SARUNATH KORHALE AND OTHERS
VERSUS
JIJABAI VITTHAL MUJMULE

...
Advocate for Petitioners : Sawant Amol S.
Advocate for Respondent : Adhav D.R.
...

CORAM : T.V. NALAWADE, J.
DATED : 18th October, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 10 in Regular Civil Suit No. 332/2012, presently pending in the Court of Civil Judge, Junior Division, Rahata. Both the sides are heard.

2. The suit is filed by present respondent for relief of injunction, removal of encroachment and for possession. The suit is filed on the basis of title allegedly obtained under sale deed dated 18.10.2012. 82 R. portion from land Gat No. 240 is shown to be purchased by plaintiff under the sale deed and it is her case that defendants have made encroachment over this portion from eastern side and that encroachment is of around 10 R.

3. Defendants have disputed the possession of plaintiff

over any portion of land Gat No. 240. The learned counsel for petitioners submitted that by taking the order of appointment of Court Commissioner and taking the measurement through T.I.L.R., the plaintiff is trying to collect the evidence of her possession over any portion of Gat No. 240. He placed reliance on the case reported as **2001 (2) Mh.L.J. 959 [Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and Ors.]** of this Court and submitted that Civil Court is not expected to give direction to collect the evidence through Court Commissioner. There cannot be dispute over the proposition.

4. Whether plaintiff is in possession or not or whether plaintiff got title under the sale deed, that will be decided only when the evidence is given. In view of the nature of dispute, there is no hurdle in making the order of appointment of Court Commissioner, who can take measurement of the land shown to be sold in the sale deed executed in favour of plaintiff. If there is no common bandh situated between this portion and remaining portion of Gat No. 240, that can be also reported by the Court Commissioner. After taking measurement of the portion shown to be purchased, the Court Commissioner can fix the marks to show the portion shown to be purchased by the plaintiff under the sale deed. The Court Commissioner is not expected to give

report as to who is in possession of any portion of the land.

5. With these observations, which are to be used by the Court Commissioner, the petition is disposed of.

[T.V. NALAWADE, J.]

SSC/