

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 1249 OF 2016

Rohan Raju Sheth . .. Petitioner
Vs
Shri Babulal Goparam Dabi. .. Respondent

Mr.Rahul Kadam, for the Petitioner.
Mr.S.C.Wakankar, for the Respondent .

***CORAM : N.M.Jamdar, J.
Saturday, 15 October 2016.***

P.C. :

The Petitioner has challenged the order dated 18 December 2015 passed by the learned Civil Judge, Small Causes Court Pune, rejecting the application filed by the Petitioner for appointment of Court Commissioner.

2. Heard learned counsel for the parties.

3. Generally in view of the various decisions of this Court appointment of Court Commissioner to demarcate the land in case of encroachment, is desirable. The learned Judge has kept that principle in mind and however has found that in the present suit, the position is different. The dispute between the parties is to the extent

of ownership and possession of the parties pursuant to the sale deeds executed in their favour. It is upon adjudication and considering the respective sale deeds that the learned Civil Judge will have to decide as to what is the area conveyed to the parties under sale deeds. The dispute between the parties cannot be left to the Commissioner to decide. After the learned Judge comes to a particular conclusion as regards the entitlement of the parties and what is the land conveyed to them under the sale deeds, it is always open to the learned Judge to appoint a Commissioner to find out present position on site pursuant to such conclusion. Therefore, I am of the opinion that at this stage of the suit in the facts of the case, the view taken by the learned Judge that appointment of Commissioner is not necessary, cannot be faulted. However, this will not preclude the learned Civil Judge, Small Causes Court, Pune, if in subsequent stage of the suit need for appointment of Commissioner arises to pass a suitable order. With this clarification, Writ Petition is disposed of.

(N.M.Jamdar, J.)