

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7321 OF 2016

Ramesh Mahadeorao Ganorkar

.. Petitioner

vs.

Mumbai District Central Co-operative
Bank Ltd. and Ors.

.. Respondents

Mr.Vikram Chavan for the petitioner

Mr.A.R.Metkari for the respondent

CORAM : K. K. TATED, J.
DATE : AUGUST 3, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff is challenging the order dated 30.12.2015 passed by 5th Additional Judge, Small Causes Court, Pune below Exhibit-291 in Regular Civil Suit No. 141 of 1992 rejecting the plaintiff's application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

3 In the present proceeding, plaintiff filed Regular Civil Suit No. 141 of 1992 for an order of injunction restraining the respondent from disturbing their possession of the suit property as described in paragraph 1 of the plaint which reads thus:

“All that piece and parcel of ground or land situated within the registration sub-district Haveli, District Pune, and within the limits of Pune Municipal Corporation at Shivajinagar (Bhamburda) bearing C.T.S.No.629/c/2 i.e. final plot No.657-c, admeasuring about 1265 Sq.Mtrs. and bounded as follows, that is to say:

On or towards East – A public land having width of 20 ft.

On or towards West – By C.T.S.No.629/c/1

On or towards South – A road having width of 25 ft.

On or towards North – By final flat No.657/B”

4 In that Suit, plaintiff preferred application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner to measure the suit property in question and submit the report. It is the contention of the plaintiff that whenever there is a dispute about the boundary and or encroachment, the court should appoint Court Commissioner to measure the property and submit the report.

5 In support of this contention, he relies on the judgment of this court in the matter of *Sulemankhan v/o Mumtajkhan and others vs. Bhagirathibai wd/o Digamber Asalmol and another, 2014(4) Mh.L.J.250* and in the matter of *Vijay s/o Shrawan Shende and others vs. State of Maharashtra and others, 2009(5) Mh.L.J.279*. In both these authorities, a dispute was about the boundaries and or encroachment. That is not the case in the matter in hand. In the matter in hand, plaintiff is seeking injunction restraining the respondent from disturbing his possession in the suit property. Hence, both these authorities are not applicable in the facts and circumstances

of the present case.

6 It is to be noted that our Hon'ble Court in the matter of *Sanjay S/o Namdeo Khandare vs. Sahebrao S/o Kachru Khandare & Ors. 2001(1) ALL MR 653* held that court should not appoint Court Commissioner to collect evidence. Similar view was taken by our Hon'ble Court in the matters of *Maria Pereira and Ors. vs. Dolorosa Christina Rodrigues, 2015(4) ALL MR 503* and *Syed. Mushtatque Ahmad Syed vs. Syed Ashique Ali Khan Haider Ali, 2012(1) ALL MR 80*. In the case in hand, plaintiff has filed suit for injunction against respondent defendant not to disturb their possession in respect of the suit property. He has not made any averments in the plaint about the encroachment by the defendant.

7 Considering these facts, I do not find any substance in the present Writ Petition to interfere with the well reasoned order passed by Trial Court dated 30.12.2015.

8 Hence, Writ Petition stand dismissed with costs.

9 Cost of Rs.2500/- to be paid to the respondent no. 1 within four weeks from today.

JUDGE