

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

WRIT PETITION NO.3154 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Avinash D. Kango for the petitioner

Mr.Omar K. Shaikh for the respondent

CORAM : K. K. TATED, J.

DATE : JUNE 7, 2016

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition, under Article 227 of the Constitution of India, petitioner original defendant challenges the order below Exhibit-50 dated 10.2.2016 passed by Civil Judge, Junior Division, Dapoli in Regular Civil Suit No.27 of 2013 filed by defendant for appointment of Court Commissioner to find out whether the defendant and others are in possession of the suit property or not.
- 3 The learned counsel for the petitioner submits that in the present proceeding, respondent plaintiff filed suit for injunction restraining

defendant from obstructing plaintiff's possession in respect of the suit property. Plaintiff preferred application below Exhibit-5 for injunction. The same was dismissed by the Trial Court on 5.2.2015. He submits that the dispute is about the property which is in possession of the defendant. Hence, it is necessary to appoint Court Commissioner to find out which property is in possession of the defendant. He submits that these facts are not properly considered by the Trial Court. Hence, it is necessary to appoint Court Commissioner. In support of this contention, he relies on the judgment of this court in the matters of ***Malhar s/o. Ganpat Bokephot & Ors. vs. Shivaji s/o. Vishwanath Pawal 2014(3) ALL MR 698 and Dattatray Namdev Kalake vs. Bapu Bhairu Bhivungade & Ors. 2015(1) ALL MR 5.***

4 It is to be noted that in the present proceeding, the suit is filed by the plaintiff for injunction restraining the defendants from disturbing their possession of the suit property. Application filed by the defendant shows that defendant wants to bring on record evidence through the Court Commissioner to prove the property which is in his possession. That cannot be allowed. It is well settled that by appointing Court Commissioner court cannot permit the parties to

bring evidence on record in their favour. In the facts and circumstances of the present case, the authority cited by the advocate for defendant is not applicable. Both the authorities are already considered by the Trial Court in paragraph 4 and 5 of the impugned order.

5 Considering these facts, I do not find any reason to entertain the present Writ Petition. Hence, same is rejected.

JUDGE