

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

WRIT PETITION NO.7068 OF 2015

Mr.Dilip Eknath Choudhary .. Petitioner

vs.

Mr.Kailash Eknath Choudhary & Others .. Respondents

Mr.PP.Goyal for the petitioner

**CORAM : K. K. TATED, J.**  
**DATE : JUNE 28, 2016**

**PC.:**

1 Heard the learned counsel for the petitioner.

2 By this petition, under Article 227 of the Constitution of India, petitioner plaintiff challenges the orders dated 30.7.2014 below Exhibit-25 and 9.3.2015 below Exhibit-34 in Regular Civil Suit No.673 of 2013.

3 By order dated 9.3.2015 passed by 3<sup>rd</sup> Additional Civil Judge, Junior Division, Pune below Exhibit-34 in Regular Civil Suit No.673 of 2013, plaintiffs' application for ad-interim injunction was rejected. As the order was passed by Civil Judge, Junior Division alternate remedy is available to the petitioner before District Court. Hence, Writ Petition stands dismissed only to the extent of challenging the order dated

9.3.2015 below Exhibit-34.

4 In the present proceeding, petitioner plaintiff filed Regular Civil Suit No.673 of 2013 before Civil Judge, Junior Division Pune under section 6 of the Specific Relief Act for possession of flat no.1 on final plot no.112, Tadiwala Road, Pune 411 001. In that Suit, plaintiff preferred application below Exhibit-25 for appointment of Court Commissioner to verify whether respondent defendant's removed the wall between flat no.1 and flat no.6. That application was rejected by Trial Court on the ground that through Court Commissioner petitioner is trying to bring on record the evidence in his favour. At the time of dismissing the said application, the Trial Court has relied on judgment of this court in the matter of *Nalubai Shinde vs. Gopalnath Shinde, 2012 (3) BCR 167*. Hence, present Writ Petition.

5 The learned counsel for the plaintiff submits that Trial Court erred in coming to the conclusion that by appointing Court Commissioner, petitioner plaintiff is seeking to bring on record evidence in his favour. He submits that unless and until the Court Commissioner is appointed, it is not possible for plaintiff to know whether defendant has removed the wall between flat no.1 and 6. Hence, order passed by Trial Court below Exhibit-25 dated 30.7.2014 be set aside directing Trial Court to appoint Court Commissioner to visit the suit premises and submit the report.

6 I have heard the learned counsel for the plaintiff at length. It is to be noted that in the present proceeding, plaintiff filed suit under

section 6 of the Specific Relief Act for possession. It is the duty of the plaintiff to bring on record the evidence which is available in his favour. It is not permitted in law that parties can bring the evidence in their favour through Court Commissioner.

7      Considering these facts and the law declared in the matter of *Nalubai Shinde vs. Gopalnath Shinde*, (Supra), I do not find any reason to entertain the present Writ Petition. Hence, Writ Petition stand rejected.

JUDGE