

Sequeira

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

WRIT PETITION NO. 8343 OF 2016

Mr. Adesh Banarasilal Gambhir .. Petitioner
Vs.
Mr. Maqsood Mohammed Habib
Ansari (Gaffar) .. Respondent

Mr. Rohit Mahadik a/w S.N. Raj, for the Petitioner.
Mr. Jayesh Joshi, for the Respondent.

***CORAM : N.M. Jamdar, J.
Thursday, 22 September 2016.***

P.C. :

Heard learned counsel for the parties.

2. The Petitioner challenges the order passed by the learned Civil Judge Junior Division Bhiwandi, appointing the Taluka Inspector of Land Records Bhiwandi, as Court Commissioner to take measurement of the suit land and to draw a map along with boundary. The suit is filed by the Respondent-Plaintiffs for removing the alleged encroachment. In this suit Written statement has been filed wherein the Petitioner has asserted position to the contrary and has stated that certain area has been acquired for road widening. As far as appointment of Commissioner in the cases where there is dispute of encroachment and boundaries is concerned, this

position of law has been settled by various decisions of this Court stating that it is appropriate and useful to have a local inspection in such circumstances. The exercise of discretion by the learned Civil Judge based on the decisions of this Court, cannot be faulted. The learned counsel for the Petitioner submitted that if the Commissioner is to be appointed, the Commissioner should also measure the entire area i.e. land at Pardi No.15, Plot no.5, on which the Petitioner is placing reliance. This submission has merit. If encroachment is to be in respect of plot no.6, then the surrounding area also needs to be measured by the Court Commissioner and plot no.6 in isolation cannot be measured.

3. In the circumstances, though I am not inclined to interfere with the impugned order of directing appointment of Court Commissioner, it is directed that the Court Commissioner will measure the entire Pardi No.15 situated at mouje-Nagaon, taluka Bhiwandi, district Thane and submit report to the learned Civil Judge, Bhiwandi as directed. Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)