

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

WRIT PETITION NO.8224 OF 2014

Gharkul Developers & Ors.

..... Petitioners

Versus

Smt. Anjali Santosh Patnakar

.....Respondent

....

Mr. Sachin Kadam for the petitioners.

Mr. Sharad Suryawanshi i/b. Ms. Smita Gaidhani for the respondent.

...

CORAM : N. M. Jamdar J.

Tuesday 23 AUGUST, 2016

P. C.

. The petitioners challenge the order passed below Exh.42 dated 11 June, 2014 in Special Civil Suit No.296 of 2010 wherein the application filed by the petitioners/defendant nos.2 to 5 for appointment of court commissioner is rejected.

2. The suit is filed by the respondent / plaintiff in respect of agreement dated 01 December 2007 in respect of purchase of a flat. In this suit, an application has been taken out by the petitioner for appointment of the Court Commissioner. The learned counsel for the petitioners submitted that the respondent/plaintiff has carried out various changes in the suit flat and therefore she is not entitled to any specific performance and it is necessary to bring on record

the position as regards the suit flat as the petitioners have no access to it.

3. The learned Civil Judge has exercised his jurisdiction in the facts of the case in not appointing Court Commissioner. If the nature of the suit is considered, it is a simpliciter suit for direction to the respondent to execute a deed in favour of the petitioners in respect of the flat purchased by the respondent/plaintiff. In view of the limited nature of the relief the appointment of the court commissioner is not necessary. It is always open to the petitioners to lead evidence. In this regard, in any case the petitioners are always entitled to take defence that because of acts of the respondent/plaintiff, she is not entitled to specific performance. It appears that the petitioners/ developers have moved this application only to delay the hearing of the suit.

4. In this circumstances, no interference is warranted. Keeping all the contentions of the parties open, the writ petition is rejected.

(N. M. Jamdar, J.)