

Sequeira

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

WRIT PETITION NO. 9858 OF 2014

Mr.Shantaram Tulsiram Shejwal. .. Petitioner

Vs.

Shri Jayesh @ Jayeshkumar

Ratan & anr.

.. Respondents

Mr.Vikram N.Walawalkar a/w Mr.Dhanesh Patekar, for the
Petitioner.

Mr.Ameya Deshpande, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Wednesday, 24 August 2016.***

P.C. :

The Petitioner challenges the order dated 11 June 2014 of rejection of Application by the learned Civil Judge, Junior Division Pimpalgaon (Baswant) taken out by the Petitioner for appointment of Court Commissioner.

2. The learned counsel for the Petitioner relying on the decision in these two cases of *Kashinath Chindhuji Shastri Vs Haribhau Nathuji Bawanthade* – [2004(2) Mh.L.J. 722] and *Haryan Waqf Board Vs Shanti Sarup and others* – (2008) 8 Supreme Court Cases 671, submitted that the Courts generally grant applications for

appointment of Court Commissioner in the disputes regarding encroachments and in respect of boundary disputes.

This position of law was brought to the notice of the learned Civil Judge, who has rightly observed that the facts of the present case are different as the case is not strictly regarding boundary disputes. In the plaint, the Petitioner has sought relief that the Respondents have no right, title and interest in the suit property. In the alternative the Petitioner has become owner by way of adverse possession. In respect of these reliefs, evidence will have to be led to prove this position. The Petitioner will have to demonstrate that he is in possession of the suit property and from a particular period. The Application was opposed by the Respondents on the ground that the Petitioner is seeking to collect evidence without going through the initial burden casts upon the Petitioner. In the facts of the present case, merely because the Respondents have denied certain averments in the plaint claiming that some part of the property is sold to a stranger, that could not justify an interference in the impugned order and substitute the discretion of the learned Civil Judge. Writ Petition accordingly cannot be entertained and is rejected.

(N.M.Jamdar, J.)