

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.699 OF 2017.

Dilip Madhavrao Shinde,
Age : 63 years, Occup. Agri.,
R/o. Mugaon, Tq. Nilanga,
Dist. Latur

...PETITIONER

Versus

Shivaji Ramkishan Shinde,
Age : 46 years, Occup. Agri.,
R/o Mugaon Tq. Nilanga,
Dist. Latur.

...RESPONDENT

.....

Mr. T. M. Venjane, Advocate for petitioner
Mr. K. V. Patil, Advocate for Respondent (sole)

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CORAM : A.M. DHAVALA, J.

DATED : 11TH JULY, 2017.

ORAL ORDER :-

1. Heard the learned advocate Mr. T. M. Venjane, for the petitioner. The petitioner is original defendant and respondent is the plaintiff. The Plaintiff has filed Regular Civil Suit No. 394/2015 which is pending before Civil Judge, Senior

Division, Nilanga. The plaintiff claims that, he is owner and in possession of Grampanchayat House No.752/1, and the defendant was trying to disturb his possession. There are some averments about illegal encroachment by the defendant, but the suit is filed on the basis of ownership and possession for perpetual injunction to restrain the defendants from making encroachment or cattle trespass on land in the possession of the plaintiff. The defendant filed written statement and he also claimed that, he is owner and in possession of the suit property. The boundaries of the suit property shown by the plaintiff and defendant are different. Hence, the defendant filed application Exh.39, for appointment of court commissioner. He claimed for joint measurement and fixation of the boundaries. The plaintiff resisted the said application, and the learned Civil Judge, Senior Division, by order dated 05.12.2016, rejected the application. The Court held that, already temporary injunction was granted in favour of the plaintiff holding him in possession of the property. There was no documentary

evidence on record which shows that, the Grampanchayat record was tampered as claimed by the defendant.

2. After hearing the learned advocate for the petitioner, I find that, it is not a fit case to exercise powers under Article 227 of Constitution of India. The plaintiff has come to the Court and it is for him to prove his case. The boundaries of the suit plot can be proved by oral and documentary evidence and for that purpose appointment of court commissioner is not necessary. The defendant is at liberty to get the boundaries fixed from the concerned authority, but appointment of court commissioner was not necessary. Rejection of this application can be made ground in appeal, in case the suit is decided against the defendant. There is no serious miscarriage of justice to invoke the powers under Section 227. Hence the petition is rejected. Hence, the rule is discharged.

[A.M. DHAVAL, J.]

vjg/-