

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 4915 OF 2013

VIJAYKUMAR@VIJAYSINGH GANPAT LAGAD
VERSUS
YASHWANT GANPAT LAGAD AND OTHERS

...

Advocate for Petitioner : Mr. Pandule A.Y.
Advocate for Respondents : Mr. N.B. Narwade for R/1.

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CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

1. The petitioner assails the order passed by the Trial Court rejecting the application filed by the petitioner (exhibit-51)m whereby, the petitioner sought appointment of a Government approved Civil Engineer as a Court Commissioner and to submit the report.

2. The petitioner is also assailing the order below exhibit-45, rejecting the application of the petitioner claiming the portion 'A' as shown by the Commissioner.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. The Court Commissioner has already submitted the measurement of the open plot and the constructed rooms are already on record. No purpose would be served by appointing a fresh Court Commissioner, in view of that order below exhibit-51 does not require any interference.

4. Under application exhibit-45, the petitioner was claiming the portion marked 'A', whereas, the Court has allotted the petitioner portion marked 'B' and portion mark 'A' would go to the respondents. According to the petitioner, the area is unequal. The valuation of the area has also not been done. The person getting the portion mark 'B' would be getting less area, all this is not considered by the Court.

5. While partitioning the property, the Court has to partition the property in an equitable manner. The Court will be required to consider that, if a person is getting more area then the other person is to be adequately compensated either by allotting him open area and or constructed area, as per the convenience of the parties and the valuation. All these aspects does not appear to have been considered by the Court. In light of that the order below exhibit-45 is quashed and set aside. The Court shall decide the application exhibit-45 afresh after hearing the parties. It may also consider allotting the shares in an equitable manner and not only in the manner as suggested in the application exhibit-45 or the report. The Court is free to consider the equitable distribution.

6. The writ petition accordingly stands disposed of. No costs.

(S.V. GANGAPURWALA)
JUDGE