

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9126 OF 2016

Mohansing Jatansing Girase

Petitioner

Versus

Vitthalsing Malesing Girase & others

Respondents

Mr. S.P. Brahme advocate for the petitioner

Mrs. S.B. Warma h/f Mr. B.R.Warma for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 13th July, 2017.)

PER COURT :-

1 I have heard Shri S.P. Brahme learned counsel for the petitioner and Mrs. S.B. Warma holding for Mr. B.R.Warma learned advocate on behalf of respondent Nos.1, 2 and 3.

2 The petitioner is aggrieved by the order dated 28.6.2016 passed by the trial Court, by which Application Exhibit 27 filed by the petitioner plaintiff, seeking appointment of a Court Commissioner by invoking order 26 rule 9 of the Civil Procedure Code, has been rejected.

3 I find from the record that, when the application Exhibit 27 was filed, seeking appointment of a Court Commissioner, the Application Exhibit 5, seeking injunctory orders under order 39 Rules 1 & 2, was pending. It is not disputed that issues were not cast.

4 This Court, in catena of judgments has laid down the law

that, unless facts and peculiar circumstances are pointed out warranting appointment of a Court Commissioner before commencement of the Trial, a Court Commissioner should not be usually appointed. It is settled that, a Court Commissioner is not appointed for collecting evidence, but his service can be availed of, when the Court feels that further information needs to be solicited by his appointment.

5 In the instant case, the plaintiff desires to bring on record the construction on the northern portion of the property. The application Exhibit 5 was pending. The plaintiff has already submitted certain measurements in the plaint.

6 Considering the above, I do not find that the impugned order can be termed as perverse or erroneous or likely to cause gross injustice to the petitioner. Merely because a second view is possible, no interference is warranted. Needless to state, after the commencement of the trial, if either of the sides desires to move such an application, same can be dealt with by the trial Court on its own merit.

7 As such, this petition being devoid of merit, is dismissed.

(RAVINDRA V. GHUGE , J)