

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10387 OF 2017
(Uttamrao Wamanrao Sanap Vs. Tanhabai Uttamrao Gujar and
others)

MrG.R.Nagargoje, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for respondent / State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 18/07/2017 by which the Trial Court has appointed a Court Commissioner in RCS No.226/2010. Learned Advocate for the petitioner/plaintiff has strenuously criticized the impugned order and has taken me through the 8 grounds formulated by him.

2. I find that the suit has been filed for declaration of ownership and injunction. The contention of the petitioner/plaintiff is that there is no road or public water pipeline of the Municipal Council, Beed on the suit property. The defendants have contended that they are in occupation and possession on the side of the East-West road for the last 40 years. It appears from the pleadings of the parties that the boundaries of the suit property are disputed and the

existence of the road is at issue.

3. Considering the above, the Trial Court has allowed application Exh.106 filed by defendant No.1 and has passed the following order :-

"2. Both the parties are directed to suggest the name of Advocate in order to appoint as a Court Commissioner to carry out the commission work.

3. The Court Commissioner is directed to visit the suit property and conduct the survey of the suit property and submit the report about the existence of the cement concrete east-west road with length and width and about the existence of the public water pipeline of Municipal Council, Beed on the suit property bearing survey No.181(A) of the village Taraf Pingle Beed adjacent to Dhanora road on or before 21/08/2017.

4. The defendant is directed to pay respective fees of Court Commissioner and furnish the necessary documents for carrying out commission work."

4. It is trite law that when a dispute as regards the boundaries or boundary marks is raised, a Court Commissioner would assist the Court. Since the cement concrete East-West road is in dispute, the Trial Court has issued the above directions.

5. I do not find that the impugned order could be termed as being perverse or erroneous. Merely because a different view could be

possible, would not justify interference in the impugned order in the light of the law laid down by the Hon'ble Apex Court in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682.

6. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)