

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

WRIT PETITION NO. 984 OF 2015

Taherali Babansab Mujjawar .. Petitioner

Versus

Deelip @ Dinkar Namdeo Jadhav .. Respondents
and others

Ms. Madhveshwari S. Mhase/Thube, Advocate for the Petitioner.
Shri S. S. Halkude, Advocate for Respondent Nos. 1 and 2.
The respondent No. 3 is served.
Petition is dismissed as against the Respondent No. 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 13TH DECEMBER, 2017.

FINAL ORDER :

. Application filed by defendants for appointment of Court Commissioner is allowed. Aggrieved thereby present writ petition.

2. Ms. Thube/Mhase, the learned advocate for the petitioner submits that, the suit filed by the plaintiff is for possession. There is no dispute with regard to identity of the property. The appointment of Court Commissioner only for the purpose of inspecting the suit property would not serve any purpose.

3. Mr. Halkude, the learned advocate for respondent Nos. 1 and 2/original defendants submits that, no harm would be caused if the actual situation on the suit site is brought on record. The

improvements made by the defendants after having purchased the suit property will come on record. That will assist the Court in effective adjudication of dispute. According to the learned advocate, Court Commissioner can be appointed at any stage of the suit. The Court has properly exercised the discretion.

4. The suit, it appears is for possession. None of the parties have disputed the identity of the suit property. It is for the plaintiffs to prove its right, title and interest over the suit property and also for the defendant to show that he has purchased the land from the plaintiff for legal necessity and he is bonafide purchaser. It is not that the defendant has to prove the improvements made therein, in the present suit and moreover that can be proved by the defendant by adducing evidence and the evidence has been adduced by the defendant. The Court can appoint Court Commissioner in disputes about identity of the property, encroachment or fixing boundary, no such purpose is being sought in the present application. Considering the nature of dispute involved in the suit, the Court Commissioner appointed would not serve any purpose. In the light of that, the impugned order is quashed and set aside. Application Exhibit 111 is rejected. The writ petition accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]