

Digamber Ravsaheb Katmore ...Petitioner
Vs.
Ashok Motiram Mohire and Ors. ...Respondents

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

1. The petition under Article 227 of the Constitution of India challenges the order dated 30th October, 2012 passed by the Joint Civil Judge, Barshi. By the impugned order, the Petitioner's application for appointment of the TILR, Barshi as Court Commissioner was rejected.

2. The Petitioner filed a suit for injunction seeking to restrain the Respondents from encroaching upon the suit property in his possession. The suit as filed was for simplicitor injunction to restrain the Respondents herein for obstructing the Petitioner's possession of the suit property. However, as the impugned order records in the application for appointment of the Court Commissioner, the words 'encroached upon the suit property by the Respondent' seems to have been inserted with ink and, therefore, an after thought. Thus, the impugned order dated 30th

October, 2012 rejects the application for appointment of the Court Commissioner.

2. Mr. Savagave, learned counsel appearing for the Petitioner invited my attention to the plaint, which has been filed and in particular, the translation in English, the plaint clearly records the apprehension of the Petitioner that the Respondent herein would trespass unauthorizedly upon the suit property. Therefore, the Respondents be enjoined for doing so. Mr. Savagave, learned counsel for the Petitioner then pointed out that the counter claim filed by the Respondents herein also indicates the fear of the Respondents, that the Petitioner would trespass upon the property is his possession. In the above view, it is submitted that this is a fit case for appointment of the Court Commissioner as the issue of possession is a disputed issue.

4. In the present facts, on the basis of the pleadings filed, no grievance has been made either by the Petitioner or by the Respondents in its counter claim that the suit property has been encroached upon. The suit as filed as well as the counter claim is for simplicitor injunction.

5. This Court in **Sanjay son of Namdeo Khandare Versus Sahebrao s/o Kachru Khandare others** [2001 (1) All MR 653] has held that the Court Commissioner cannot be appointed for the purposes of collecting evidence on behalf of the Plaintiff to find out who is in possession of the suit property. The Court held that the Plaintiff has to necessarily prove his case by relying upon the evidence in support of his case. Therefore, an order passed to appoint a Court Commissioner to find out who is in possession, is clearly in excess of jurisdiction. Similarly, the Apex Court in **Haryana Waqf Board Vs. Shantisarup and Others** [(2008) 8 Supreme Court Cases 671] has taken a view only when the property has been

encroached upon, then the appointment of the Court Commissioner is appropriate. This is admittedly not a case of encroachment of the suit property.

6. In the above view, on the basis of the pleadings, the impugned order cannot be found fault with. Therefore, no occasion arises to interfere in my supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, petition is dismissed.

7. The learned counsel for the parties seek expeditious disposal of the pending suit. The parties are at liberty to move an application before the Learned Trial Judge, who would consider the same appropriately, if made.

(M.S.SANKLECHA,J.)