

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4570 OF 2017

M/s.Kalyani Lemmerz Private Ltd. ... Petitioner

Vs.

Sou.Asha Sopandeo Gosavi ... Respondent

Mr.S.R. Agarkar i/b U.B. Nighot for the Petitioner

Mr.Pratapsinh Rananavare with V.P. Ambure i/b D.B. Lonkar for
Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 6, 2017**

P.C. :

1. Not on Board. Upon urgent mentioning, taken on Production Board.
2. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
3. This petition is directed against the order dated 15.2.2017 passed by the learned Joint Civil Judge Junior Division, Khed below exhibit 26 in Regular Civil Suit No.109 of 2013 thereby appointing the T.I.L.R., Khed, as Court Commissioner to measure the suit properties of the plaintiff and also of the defendants.
4. The learned Counsel for the petitioners/defendants submits that in the plaint, a prayer for appointment of an expert as Court

Commissioner and measuring the suit land as per the layout plan dated 28.2.2008 is made. The learned Counsel submits that if at all, this prayer is allowed, then, it is as good as giving final relief at interim stage. He further submitted that this amounts to collection of evidence. He submitted that the plaintiff have already sold their land to the defendant.

5. The learned Counsel for the respondent/plaintiff while opposing this Writ Petition has submitted that when the Court Commissioner is appointed to measure the lands and carried out the local investigation, then, it is necessary for the purpose of removing the encroachment to fix boundaries of the suit premises or the suit land. He relied on the judgment of the learned Single Judge of this Court in the case of **Girish Vasant Bhoyar and anr. vs. Nimbaji Warluji Bambal**¹.

6. Perused the complaint and the prayers as also the impugned order dated 15.2.2017 passed by the learned Joint Civil Judge, Junior Division, Khed. The suit is filed for mandatory injunction of removal of encroachment and also for removal of pipelines, cables from the encroached land. The appointment of Court Commissioner for measurement of the suit lands is also prayed. Further, the prayer of perpetual injunction and possession is also made in the said suit. In the case of **Girish Vasantrao Bhoyar & anr. (supra)**, the learned Single Judge of this Court has rightly observed that in order to determine whether there is an encroachment, it is always desirable to get measurements of the

¹ 2009 (4) Mh.L.J.

land encroached upon and so wherever there is a dispute or demarcation of the boundaries, then it is appropriate for the Court to direct an investigation by appointing a Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code.

7. Considering the nature and the facts of the present matter, though there is a prayer for appointment of Court Commissioner, it is necessary to grant that prayer at interim stage and it won't amount to deciding the suit finally as substantive prayer for mandatory injunction and removal of the encroachment and possession are still to be adjudicated. Hence, the impugned order cannot be faulted with.

8. In the circumstances, Rule is discharged.

(MRIDULA BHATKAR, J.)