IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1827 OF 2017
(ARUN BABURAO PAWAR...VS..SMT. LATA DHARAMRAO PARATE & OTH.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri R.R.Vyas, Advocate for Petitioner.
Shri M. Anilkumar, Advocate for Respondent Nos. 1 to 3.

CORAM : S.C.GUPTE, J.
DATED : SEPTEMBER 26, 2017.

The present petition challenges an order passed by the Joint Civil Judge Senior Division, Chandrapur in Regular Civil Suit No. 473 of 2012. The petitioner is original defendant No.1 to the suit. The impugned order is of appointment of a Court Commissioner passed on the application of the respondents (original plaintiffs). The suit is for declaration of ownership, possession and removal of encroachment and unauthorized construction by original defendant No.1. The defendant, whose land abuts the plaintiffs' land, disputes the encroachment.

The trial Court has appointed a commissioner to examine the respective lands of the parties with a view to decide about the encroachment. Whilst the Commissioner's appointment is not permissible for deciding the matter of encroachment, since that is the very issue to be determined in the suit, with a view to ascertain the disputed portion of the land, which forms the subject matter of the suit, it is necessary that a proper map of the respective lands claimed by the parties be prepared.

The commissioner appointed by the trial Court, shall, accordingly, prepare a map of the lands respectively claimed by the parties in the joint presence of both the parties.

The petition is, accordingly, **disposed of** with direction / clarification as above.

JUDGE

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