

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1055 OF 2018

KADUBAI RAMNATH GHAYAL
VERSUS
INDUBAI NANSAHEB DHOLE AND OTHERS

Advocate for Petitioner : Shri W.S. Jadhav.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th January, 2018

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 03/10/2017, by which, application Exhibit 13, filed by the petitioner in R.C.S. NO. 267/2013, praying for appointment of a Court Commissioner, has been rejected.

2. Learned counsel for the petitioner has strenuously criticized the impugned order. He has drawn my attention to the six grounds formulated in the memo of the petition. I have considered the petition paper book with his assistance.

3. It is contended by the petitioner that a Court Commissioner can be appointed to measure the suit land as the suit has been preferred for declaration of ownership, for directions to measure the suit land and for recovery of possession. Measurement of the suit

land in order to enable recovery of possession, is one of the reliefs sought. It is, therefore, contended that if the suit land is measured, it would be beneficial to the litigating sides.

4. Issues have been cast and though recording of oral evidence may not have commenced, the trial can be said to have commenced.

5. I find from the prayers put forth by the plaintiff in the plaint that the dispute is with regard to the Well situated in land gut No. 12/2. The petitioner desires a share to the extent of 0-8-0 for usage of water from the Well. Further declaration that the plaintiff be held as the owner of 80 Ares land in the suit land admeasuring 02 Hectors and 43 Ares, has been put forth and recovery of possession with mesne profits till possession is delivered, is also prayed for.

6. The Trial Court, while rejecting Exhibit 13, has recorded that there is no dispute as regards the suit property. Plaintiff does not contend that the defendants have encroached over the suit property or that the boundary marks have been disturbed. One of the issues framed is, whether the plaintiff has a right to have the suit property measured? It is in this backdrop that the Trial Court has rejected application Exhibit 13.

7. This Court has consistently held in several judgments/orders that the appointment of the Court Commissioner can be permitted after the recording of oral and documentary evidence. If the Trial Court is convinced that such a Court Commissioner can be appointed at that stage, it may issue necessary orders.

8. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, is therefore dismissed.

9. It is, however, clarified that after the recording of evidence, in the event of any litigating side moving an application for appointment of a Court Commissioner, the Trial Court would consider the said application on its own merits and without being influenced by its observations set out in the impugned order dated 03/07/2007.

(RAVINDRA V. GHUGE, J.)