

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 13564 OF 2017

RAOSAHEB ASARAM JAGTAP
VERSUS
SUNIL VASANT KHARTODE AND OTHERS

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Advocate for Petitioner : Mr. N. D. Sonavane
Advocate for Respondent Nos. 1 to 3 : Mr. Y. S. Choudhari h/f Mr. D.
D. Adhav

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CORAM : V. K. JADHAV, J.
DATED : 9th MARCH, 2018

PER COURT :-

1. Heard finally with consent at admission stage.
2. The petitioner / original plaintiff has filed application Exh.43 in R.C.S. No. 294 of 2010 for appointment of Court Commissioner. The trial court has rejected the said application on 28.06.2017. Hence, this writ petition.
3. Learned counsel for the petitioner submits that the petitioner / plaintiff has instituted the suit for declaration and decree of perpetual injunction with a specific pleading that the defendant Nos. 1 to 3 are not in possession of the land shown to have been purchased. In fact, they have no land in Gut No. 405. In order to grab all the land of the plaintiff and well situated therein, they have

falsely got executed the registered sale deed, which is not binding on the petitioner / plaintiff. In the backdrop of these pleadings, the petitioner / plaintiff has filed an application thereby pointing out to the court that there is one old well in the suit land belonging to the petitioner / plaintiff and the measurement of the suit land is necessary along with the entire land Gut No. 405 to resolve the dispute. However, the trial court has rejected the said application. Learned counsel submits that in some of the cases, the person may not be the owner still he is in actual possession of the property and in such cases, this court has taken a view in the case of **Mohd. Hashim Ajmullah Khan vs. Vasiullah Nasibullah Khan and others, reported in 2014 (1) Bom.C.R. 383**, justifying the order of appointment of Court Commissioner.

4. Learned counsel for the respondents / defendants submits that in a suit for declaration and perpetual injunction when there is no dispute about encroachment or boundaries, for collection of evidence, appointment of Court Commissioner is impermissible. The Trial Court has rightly rejected the application. No interference is required.

5. I do not find any substance in this writ petition. The petitioner / plaintiff has instituted the suit for declaration of ownership and decree of perpetual injunction in respect of the suit

land along with declaration in respect of share in the well-water. There is no boundary dispute nor there are any allegations about encroachment.

6. It appears from the contents of application Exh.43 that the petitioner / plaintiff in para No.6 has contended that the entire land Gut No. 405 is required to be measured to find out his title to the suit property and also about the possession over the suit well. In a suit for declaration and perpetual injunction such collection of evidence through Court Commissioner is not permissible. The learned Judge of trial court has rightly rejected the application. No interference is required. Writ petition is dismissed. No costs.

(V. K. JADHAV, J.)

vsm/