

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 958 OF 2017

Rachana Radheshyam Sharma	.. <u>Petitioner</u>
Versus	
Murlidhar Pusaram Vyas	.. <u>Respondent</u>

Mr. S. B. Bhapkar, Advocate for the Petitioner.
Mr. Satyajit S. Bora, Advocate for Respondent /
Sole.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. The application filed by the defendant for appointment of Court Commissioner is rejected.

2. Mr. Bhapkar, learned counsel for the petitioner / defendant submits that in the plaint the sketch has been given of the location of the property by the plaintiff. From the property of the defendant there is no way of approach to the plaintiff. There is no way that encroachment as alleged by the plaintiff can be made by the defendant. To bring on record the actual position the application is filed for appointment of Court

Commissioner. The report of the Court Commissioner would assist the Court in coming to the just conclusion. The application is not given for the purpose of gathering evidence but to bring on record the actual position of the suit property.

3. Mr. Bora, learned counsel for the respondent / plaintiff submits that as yet the Exhibit - 5 is not decided and the application has been filed. The application for appointment of Court Commissioner in a suit for perpetual injunction would not be tenable.

4. I have heard the learned counsel for respective parties.

5. The parties have not yet led any evidence. The suit is for perpetual injunction. It would be pre-mature at this stage to appoint the Court Commissioner. After the parties have adduced the evidence, if need arises, then the party can make an application for appointment of Court Commissioner.

6. In the view of above, there is no need to interfere with the order passed by the Trial Court, however, with an observation that if after the parties have adduced evidence, if it is found appointment of Court Commissioner is necessary, then at that stage, the party can make an application for appointment of Court Commissioner which application shall be considered by the Court on its own merits.

7. Writ Petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

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