

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5494 OF 2017

Sardar Miyasab Pirjade .. Petitioner
Vs.
Smt.Najirabi Mehaboob Shaikh and ors. .. Respondents

Mr.Sarang S.Aradhya, for the Petitioner.

CORAM : M.S.KARNIK, J.
DATE : 23rd OCTOBER, 2018

P.C. :

. Heard learned Counsel Shri Aradhya for the
Petitioner.

2. By this Petition, the Petitioner who is the original defendant had filed an application Exhibit 14 for appointment of Court Commissioner. The said application was filed to find out who is in possession of the suit property and to bring on record the factual position. Learned Counsel for the Petitioner submits that the defendant had purchased the said suit property from

the deceased husband of the Plaintiff No.1 and since the date of the sale, it is the defendant who is in possession. Even the plaintiffs are claiming to be the owners and possessor of the suit property.

3. Learned Counsel for the Petitioner submits that the appointment of the Court Commissioner is very necessary to find out who is in possession of the suit property. He has invited my attention to the prayer clause (c) in the plaint of the Regular Civil Suit No. 622 of 2015. He contends that the said prayer clause itself will indicate that the plaintiffs are praying for declaration that they are the owners of the suit property on the basis of the plaintiffs being in adverse possession. Learned Counsel urged that plaintiffs are falsely claiming that they are the owners of the suit property.

4. I have gone through the order passed by the learned trial Court. The Trial Court has recorded that based on the pleadings it has to be determined whether the defendant was

put in possession of the suit property by virtue of registered sale deed executed by ancestors of the plaintiffs. The prayer made in the plaint is to declare that sale deed is not binding on them. The trial Court has further observed that it is not the case of the plaintiffs that the defendant has made encroachment.

5. The Court Commissioner cannot be appointed to collect evidence, in this view of the matter, I do not find that appointment of the Court Commissioner is at all necessary. No error can be seen in the order of the trial Court.

6. The Petition is therefore dismissed with no order as to costs.

(M.S.KARNIK, J.)