

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12081 OF 2017

Shri. Sadashiv Mahadev Sawant

... **Petitioner**

V/s.

Smt. Sushila Shripati Giri (Buva)

... **Respondent**

Mr. Abhijit Adagule for the Petitioner.

Mr. Prashant Bhavake for the Respondent.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 14th AUGUST, 2018

P.C.:

. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally and disposed of at the stage of admission.

2 By invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, this petition is filed wherein the Order dated 17.07.2017 passed by the Civil Judge, Junior Division, Kagal below Exh.46 in Regular Civil Suit No. 81 of 2010, is challenged.

3 The Plaintiff filed suit for mandatory injunction in the said suit. The defendant moved the application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for the appointment of the Court Commissioner praying that the measurement of the property of the plaintiff i.e. Gram Panchayat Property Nos. 110 and 111.

4 The learned Counsel for the petitioner/sole plaintiff submits that the properties of the Respondent/Defendant is also to be measured along with his properties.

5 The learned Counsel for the Respondents/Defendants has supported the order passed by the learned Judge and submitted that measurement to be confined as per his application.

6 In view of the submissions of the Counsel of both the parties, the petition can be disposed of with following order.

7 The order of the Trial Court is hereby maintained with following modification.

8 The Court Commissioner should take the measurement of not only Gram Panchayat Property Nos. 110 and 111 owned by the Plaintiff, but also to measure the property of the Defendant which is Gram Panchayat Property No. 109, or any other as pleaded by the Defendant. Measurements are to be carried out by the Court Commissioner on or before 15.09.2018. The remaining order of the Trial Court is maintained as it is. However, the Court Commissioner's fee instead of Rs.1500/- is to be paid Rs.2000/- out of which the Defendant to pay Rs.1000/- and plaintiff to pay Rs.1000/-.

9 Writ petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)