

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2107 OF 2018

Nanasaheb Dashrath Dhuke	 Petitioner
V/s.	
Vanita Dattatraya Gaikwad & Ors.	 Respondents

Mr. Rahul S. Kadam for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Kadam, learned counsel for the Petitioner.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th March 2017 passed by the Civil Judge, Junior Division, Indapur, below the application “Exhibit-19” in Regular Civil Suit No.178 of 2015.

3. The application at “Exhibit-19” was filed by the Respondent-Original Plaintiff, under Order 26 Rule 9 of the Code of Civil Procedure, 1908, for appointment of T.I.L.R., Indapur, as 'Court Commissioner'. The Trial Court has, after considering the pleadings of the parties, allowed the said application and hence, the instant Writ Petition.

4. The submission of learned counsel for the Petitioner is that, the present Suit is not at all in respect of the boundary dispute. The property of the Petitioner and Respondent is totally different and in such situation, it was not at all proper on the part of the Trial Court to hold that, it being the boundary dispute, appointment of 'Court Commissioner' to measure the suit property is always desirable. In his submission, in this case, the appointment of 'Court Commissioner' is for collection of the evidence and such appointment cannot be permissible; especially when the Respondent-Plaintiff has not given the boundaries of her land and now she wants to establish her possession over the suit property on the basis of the Court Commissioner's Report.

5. However, the perusal of the plaint clearly goes to show that, the Petitioner and the Respondent, both, are claiming ownership and possession over different portions of the suit lands bearing Gat Nos.423/1A and 423/1B. According to the Respondent, she has purchased the land admeasuring 60 R, out of the said Gat No.423/1B; whereas, according to the Petitioner, he is in possession of land admeasuring 20 R, out of the Gat No.423/1A, which he has purchased from Original Defendant No.6. Thus, when both the parties are claiming possession in respect of different areas out of one Gat number only, i.e. Gat No.423/1A, admeasuring 1 H 20 R, then, as observed by the Trial

Court, in order to decide which portion of the said Gat number is in possession of the Petitioner and which portion of the said Gat number is in possession of the Respondent, the appointment of 'T.I.L.R.' as the 'Court Commissioner' is the only way to do so.

6. As a matter of fact, the averments made in paragraph No.3 of the plaint clearly goes to show that, when Respondent started ploughing the land on 25th June 2015, Petitioner obstructed to her and told her to get the portion of the said land measured as per the 'Sale-Deed' and further threatened her not to obstruct his possession over the suit land. Therefore, if the entire dispute can be effectively and completely resolved, after the measurement of the land by the 'T.I.L.R.', the appointment of 'Court Commissioner', in such situation, cannot be faulted with. Conversely, it will assist the Court to decide the exact dispute between the parties.

7. Hence, no interference is warranted in the impugned order passed by the Trial Court. The Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]