

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1180 OF 2016

Ravikiran Mahadev Kadam ..
Petitioner
Vs.
Sudhirkumar Vyankatrao Nimbalkar and ors. ..
Respondents

Mr.Ashok M.Misal, for the Petitioner.
Mr.Prasad P.Kulkarni, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE :16th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner and
learned Counsel for respondent No.1.

2. The petitioner is the original plaintiff. The
plaintiff filed Suit for measurement of the Suit land
through T.I.L.R. The Suit is also filed for injunction
restraining the defendants from interfering with the
possession of the plaintiff over the suit property. It is

the contention of the plaintiff that he had purchased the suit property by sale deeds dated 26/11/1998 and 11/08/2000. There is dispute about the boundaries. Learned Counsel for the petitioner submitted that Suit is for fixation of boundaries and for perpetual injunction. He therefore submitted that it was necessary to appoint Court Commissioner to submit a report. By application below Exhibit 8, petitioner applied for appointment of Court Commissioner. The trial Court rejected the application Exhibit 8 by order dated 30/12/2013. The trial Court observed that though there is boundary dispute but directions of the purchased property of the plaintiff are not fixed. According to the trial Court it is the plaintiff who has to prove ownership, possession, obstructions and entitlement. The Court Commissioner cannot be appointed to collect evidence. I do not see any reason to interfere with the order passed by the trial Court as evidence of the parties is yet to be recorded. However, after evidence is recorded, on the petitioner making an application for appointment of the

Court Commissioner, if necessary, the trial to consider the same afresh on its own merits without being influenced by observations made in the impugned order.

3. With these observations, the Petition is rejected.

(M.S.KARNIK, J.)