

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5545 OF 2019

Shri Nivrutti Baburao Kadam .. Petitioner
Vs.
Shri Chandrakant Jagannath Kadam and ors. .. Respondents

Mr.Mohan N.Dhamal, for the Petitioner.
Mr.V.S.Talkute, for the Respondents No. 1 to 3.

CORAM : M.S.KARNIK, J.

DATE :04th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. The petitioner is challenging the order dated 08/10/2018 passed by the trial Court below Exhibit 201 rejecting the application for appointment of the Court Commissioner. The Suit is filed by the petitioner – original plaintiff for perpetual injunction restraining the defendants from interfering with the peaceful possession of the plaintiff who are in possession of one hectare and 9 R area which is the subject matter of the Suit. Learned Counsel for the petitioner would

submit that Revenue Officer who is no more in service has turned hostile and deposed against the interest of the petitioner, therefore the petitioner had to file application Exhibit 201 for appointment of the Court Commissioner. Learned Counsel would rely upon the following decisions in support of his case.

i) Vachhalabai w/o Kundlik Gavane and ors. Vs. Chinkaji s/o Malhari Jadhav and ors. reported in 2012 (4) Mh.L.J. 198.

(ii) Girish Vasantrao Bhoyar and anr. Vs. Nimbaji Warluji Bambal reported in 2009(4) Mh.L.J. 371.

He would further submit that the appointment of the Commissioner is necessary to resolve the controversy and the report will indicate exactly the extent of the land which is in possession of the petitioner.

3. Learned Counsel for respondents on the other hand supported the impugned order. He would submit that Suit is simplicitor for injunction and therefore it is for the plaintiff to

establish his case.

4. I have gone through the order passed by the trial Court. The Suit filed by the plaintiff is for injunction on the premise that he is in possession of 1 Hectare and 9R of land. It is for the plaintiff to prove his case. Even the evidence in the present case has been recorded. No doubt, in a given case, the Commissioner can be appointed. The decisions which are relied upon by the plaintiff arise out of suit filed for removal of encroachment. The same therefore cannot have any application in the facts of the present case. The trial Court is of the opinion that the Court Commissioner cannot be appointed to collect the evidence. As to what extent of area is in possession of the plaintiff can be determined upon appreciation of evidence and at the time of hearing. In this view of the matter, I see no reason to interfere with the order passed by the trial Court. Petition is rejected.

(M.S.KARNIK, J.)