

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4237 OF 2018

Subhash Pandharinath Shevkar ...Petitioner

Versus

Yashwant Pandharinath Shevkar & ors. ...Respondents

Mr. Rahul D. Motkari, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 12th JULY, 2019

Oral Order :-

1. Heard Mr. Motkar, the learned Counsel for the Petitioner.

2. By this petition under Article 227 of Constitution of India, the Petitioner assails the legality, propriety and correctness of an order passed by the learned Joint Civil Judge, Junior Division, Pimpalgaon (B), on 30th July, 2016, whereby the prayer of the Petitioner to appoint Taluka Inspector of Land Records (T.I.L.R.) as the Court Commissioner to measure the suit land bearing Gat No.762 and ascertain as to which portion of the said Gat No.762 is in possession of the Plaintiff and Defendant Nos.1 to 4, came to be rejected.

3. The Petitioner – Plaintiff has instituted a suit for partition and separate possession of agricultural lands bearing Gat Nos.762/3A, 762/4A, 762/3B, 4B, 6B and 762/6A. It is the case of the Petitioner that though the plaintiff and defendant nos.1 to 3, who are the real brothers, are in separate possession of the portions of the suit land, in pursuance of family settlement, there has been no partition by metes and bounds. The defendant no.3 by taking undue advantage of the mutation of a portion of the suit land, in his name, alienated an area admeasuring 30 Are in favour of defendant no.4 on 12th October, 2014. Hence, the plaintiff was constrained to institute a suit for partition and separate possession. Defendant no.1, per contra, alleges that the suit land has already been partitioned and the plaintiff and defendants are in possession of their respective shares.

4. In the backdrop of the aforesaid nature of the suit, the learned Civil Judge was not persuaded to appoint a Court Commissioner to measure the suit land. The learned Civil Judge was of the view that local inspection can not be ordered to collect evidence, which can be tendered by the

parties, and the possession of the parties can not be ascertained by appointing a Court Commissioner.

5. In the backdrop of the nature of the dispute which essentially revolves around the question as to whether there has been a partition of the suit land amongst the plaintiff and defendant nos.1 to 3, the exercise of the discretion by the learned Civil Court not to appoint a Court Commissioner does not seem to be either perverse or unreasonable. The question as to whether the parties are in possession of a particular portion of the suit land can not be determined on the basis of local inspection and measurement by TILR. It is for the parties to lead evidence to establish their claim as to possession over a particular portion of the suit land. It is trite that a Court Commissioner can be appointed to elucidate any matter in dispute. The appointment of TILR to measure the suit land would not render any assistance in determining the question of possession. In the facts of the instant case, the learned Civil Judge was justified in refusing to exercise the discretion in favour of the plaintiff.

6. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]