

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7081 OF 2017

Isaq Dadamiya Mokashi through
Power of Attorney holder

Juber Issaq Mokashi

..Petitioner.

V/s.

Rajaram Sitaram Shingan & Ors.

..Respondents.

Mr.Kalpesh U.Patil for the petitioner.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 23, 2019

P.C.:-

Heard Mr.Patil, learned counsel for the petitioner.

2. Challenge in this petition is to the order dated April 30, 2015 by which learned trial Judge has dismissed the petitioner's application for appointment of a fresh Court Commissioner.

3. The record indicates that at the request of the petitioner, a Court Commissioner was appointed vide order dated October 7, 2010 and the Commissioner has submitted a report. However, the petitioner is dissatisfied with the said report. Therefore, an application at Exhibit-61 was taken out for appointment of a fresh Court Commissioner, that has been rejected by the impugned order dated April 30, 2015. Hence

the present petition.

4. Mr.Patil, learned counsel for petitioner points out that the Court Commissioner has not followed the mandate of earlier order dated October 7, 2010. He submits that the record indicates that there were sub-divided plots at the site and despite this the Commissioner has ignored this position. He, therefore, submits that it was a fit case for appointment of a fresh Court Commissioner.

5. According to me, discretion has been exercised by learned trial Judge in a reasonable and proper manner. Merely because, the petitioner might not be satisfied with the Court Commissioner's report, that is not a ground to seek appointment of another Commissioner. In the result, the petitioner is virtually seeking appointment of a Court Commissioner to collect evidence for the petitioner. This is impermissible.

6. Merely because the application for appointment of Court Commissioner is dismissed, that never precludes a party from engaging his own surveyor / expert and thereafter examine such surveyor / expert as his witness. This course of action is always open to the petitioner, if the petitioner chooses to so adopt. However, there is no legal infirmity in the impugned order.

7. Accordingly, the petition is dismissed.

8. However, liberty is granted to not only the petitioner but to

all the parties to the suit to adopt the aforesaid course of action, if they are so advised.

9. With liberty as aforesaid, the present petition is disposed of. There shall be no order as to costs.

10. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)