

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.1214 OF 2019
WITH
MISC. CIVIL APPLICATION ST.NO. 5202 OF 2019 (REST)
WITH
REJ.WRIT PETITION NO.124 OF 2019 (WP ST. NO.25496/2018)
(SAYYAD MOBIN AHMED SAYYAD MUNAF...VS.. QAZI AHEMAD ALI MANSAB ALI & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.A.Babrekar, Advocate for Petitioner/Applicant.

CORAM : Z.A.HAQ, J.
DATED : JULY 17, 2019.

CIVIL APPLN.NO.1214/2019 & MCA ST.NO.5202/19.

As the office objections were not removed, registration of the writ petition is refused by the order passed by the learned Registrar (Judicial).

As the petition is rejected before it came up before the Court for consideration, without issuing notice to the respondents and accepting the explanation given in the application, delay of 25 days in filing the Misc. Civil Application is condoned, order passed by learned Registrar (Judicial) on 28th January 2019 is set aside and the writ petition is restored.

The Civil Application and Miscellaneous Civil Application are **allowed** accordingly.

WRIT PETITION NO.124/2019 (ST.NO.25496/18)

Taken up for hearing on admission.

Heard.

The original defendant No.2 has challenged the order passed by the trial Court allowing the application (Exh.35) filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure and appointing Deputy Superintendent of Land Records as Court Commissioner for measuring and fixing the boundaries of Plot Nos. 52 and 56 of the concerned layout.

The submission on behalf of the petitioner/defendant No.2 is that the civil suit is filed praying for decree for perpetual injunction only, and therefore, the appointment of Court Commissioner to carryout the measurement is not necessary. It is submitted that the plaintiff is seeking to collect evidence through Court Commissioner which is not permissible.

With the assistance of the learned Advocate for the petitioner, I have gone through the order passed by the trial Court on application (Exh.5) on 21st December 2017, the application (Exh.35) and the impugned order.

In paragraph No.5 of the impugned order, the learned trial Judge has recorded reasons for appointing the Court Commissioner. I find that the learned trial Judge has properly exercised the jurisdiction vested in him under Order 26 Rule 9 of the Code of Civil Procedure. Hence, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE