

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4726 OF 2018

Shewantabai wd/o Narayanrao Khode

-vs-

Bhaurao s/o Balaji Girhe and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V. G. Bhamburkar, Advocate for petitioner.
Shri A. M. Kukday, Advocate for respondent
No.3/Corporation.

CORAM : A.S.CHANDURKAR, J.

DATE : June 14, 2019

The petitioner is aggrieved by the order passed by the trial Court below Exhibit-173 rejecting the application for appointment of Commissioner.

2. The petitioner is the original plaintiff who has filed suit for partition and separate possession of various properties mentioned in paragraphs 7 and 8 of the plaint. In that suit after leading evidence, an application below Exhibit-173 was filed seeking appointment of Commissioner. The trial Court by observing that the plaintiff intended to collect evidence through the Commissioner rejected the application.

3. Shri V. G. Bhamburkar, learned counsel for the petitioner submitted that the appointment of Commissioner was necessary as the defendants were disputing the description of boundaries of the

suit property. Appointment of a Court Commissioner would have clarified the aspect with regard to the disputed boundaries of the suit property. It was not any attempt to collect evidence as observed by the trial Court.

4. The learned counsel for the respondent No.3 supported the impugned order and submitted that it was for the plaintiff to succeed on her own merits.

5. After hearing the learned counsel for the parties it is seen that the trial Court was justified in passing the impugned order. There is no reason made out in the application below Exhibit-173 requiring appointment of the Commissioner. Merely because the defendants were disputing the entitlement of the plaintiff to any right in the said property, the same could not be a reason for appointing the Commissioner. It is always open for the plaintiff to indicate the nature of suit property and her entitlement to share in it by leading evidence in that regard. Hence there is no reason to interfere in writ jurisdiction.

Writ Petition is therefore dismissed. No costs.

JUDGE