

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

WRIT PETITION NO.6050/2019

Rukhsanabano W/o. Sheikh Salimoddin & oth ..VS.. Irfan Ahemad S/o. Abdul Jabbar Kureshi & Anr.

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

Court's or Judge's orders

Shri Abhijeet P. Deshmukh, Advocate for the petitioners

CORAM : Z.A.HAQ, J.

DATED : 9th September 2019

Heard.

2] The original defendants take exception to the order passed by the trial Court by which the application (Exh. 26) filed by the respondents/plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure is allowed and Taluka Inspector of Land Records is appointed as Court Commissioner to carry out measurement of the suit field.

3] According to the defendants, measurement of the suit field was carried out by Land Acquisition Officer in the year 2001 when land acquisition proceedings were taken up and then the plaintiffs got the suit field measured before filling of the civil suit also. To support the submission that in such situation Court Commissioner should not be appointed, learned Advocate for the petitioners has relied on the following judgments:

i] Judgment given by this Court in the case of

Dnyandeo Vithal Salke and Oth. .v/s. Dagdu Kadar Inamdar, reported in **2017 (3) Mh.L.J. 314.**

ii] Judgment given by this Court in the case of *Sanjay Kisan Thorat & Ors. .v/s. Ramchandra Parsu Thorat & Anr.* reported in **2018 (3) ALL MR 487.**

4] After going through the impugned order, I find that the learned trial Judge felt it necessary to appoint Court Commissioner to carry out the measurement of the suit field, considering the fact that the plaintiffs are seeking decree for removal of encroachment over about 0.15 R. land. The conclusions of the learned trial Judge are in consonance with the judgment given by the Hon'ble Supreme Court in the case of *Haryana Waqf Board .v/s. Shanti Sarup and Oths.* reported in **(2008) 8 SCC 671.** The judgments relied upon by the learned Advocate for the petitioners are not of any assistance to the petitioners as they are delivered in cases in which the plaintiff/plaintiffs in those cases sought decree of injunction simplicitor. I find that the order passed by the learned trial judge is proper and does not suffer from any patent illegality or error of jurisdiction which necessitates inference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE