

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

Writ Petition No. 2983 of 2018

Ismail Kha S/o Daudkha

Vs.

Bilkis Bano W/o Mo. Sabir & Anr.

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

Court's or Judge's orders.

Mr. Anilkumar J. Thakkar, Advocate for the Petitioner.

Mr. V.B. Bhise, Advocate for the Respondent No.1 and 2.

CORAM : MANISH PITALE, J.

DATED : APRIL 08, 2019.

1. Petitioner herein has challenged the order dated 8th August, 2017 passed by the Court of Joint Civil Judge (Junior Division), Akot, whereby an application filed by the respondents (original plaintiffs) for appointment of Court Commissioner and measurement of plots, has been allowed. It has been further directed in the impugned order that the charges and expenses of the Court Commissioner shall be borne by the petitioner and the respondents equally.

2. Learned counsel appearing for the petitioner (original defendant) submits that even if no serious objection is raised to the appointment of Court Commissioner and measurement of plots by the impugned order, the petitioner has a serious objection to clause no.3 of the said order, which reads as follows:-

“3. 50% Court Commissioner charges and expenses shall be borne by the plaintiffs and remaining 50% charges and expenses shall be borne by the defendant.”

3. It appears that application for appointment of Court Commissioner and measurement of plot has been allowed. It is the claim of the respondents that the petitioner has made encroachment towards the northern side of their land. In these circumstances, it appears that the objection raised on behalf of the petitioner (original defendant) to clause No.3 of the impugned order, is justified.

4. If the Commissioner has been appointed for the measurement of plot at the behest of the respondents (original plaintiffs), it would be inappropriate for the petitioner (original defendant) to bear 50% of the charges of the Court Commissioner.

5. Therefore, while upholding the impugned order, clause No.3 thereof is modified to the extent that the expenses and charges of the Court Commissioner shall be borne by the respondents (original plaintiffs). It is further made clear if the suit filed by the respondents (original plaintiffs) is decreed in their favour, they would be entitled to claim the aforesaid charges and expenses of the Court Commissioner, as costs from the petitioner (original defendant).

JUDGE

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