

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
WRIT PETITION (WP) NO.1286 OF 2020

Santosh S/o Dattatray Burukale

..VERSUS..

Mulchand S/o Jagganath Bhutada and others.

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

Court's or Judge's

Shri. I.F. Jain, Advocate for the Petitioner.

CORAM : N. B. SURYAWANSHI, J.
DATE : 17.07.2021.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this petition, the Petitioner challenges the order dated 10.01.2020 passed by the learned Civil Judge Junior Division, Nandura below Exh-66 in R.C.S. No.14 of 2013, thereby rejecting the application for appointment of the Court Commissioner filed by Petitioner.

3. The Respondent No.1 being a landlord filed R.C.S. No.14 of 2013 seeking possession of the suit property i.e. a room admeasuring East-West 22 Ft. and South-North 10 Ft. in Municipal Council property No.316.

4. The Petitioner claims that he filed R.C.S. No.35 of 2012 against the Respondent No.1 – original Defendant for declaration and perpetual injunction and other incidental reliefs. The Respondent No.1

appeared in the same and filed written statement thereby admitting the description of the suit property (New Malmatta No.316 having three rooms admeasuring total area 48x33 Ft).

The Petitioner filed application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure at Exh-66 seeking appointment of the Court Commissioner for measurement of room in question. It is contended that, taking into consideration the discrepancy in the description of the suit property in R.C.S. No.35 of 2012 and R.C.S. No.14 of 2013, it is necessary to appoint the Court Commissioner for measurement of the tenanted premises. The said application was rejected by the trial Court, hence the present petition.

5. Heard the learned Advocate for the Petitioner.

6. The learned Advocate for the Petitioner contended that the trial Court erred in rejecting the application for appointment of the Court Commissioner ignoring the fact that there appears discrepancy in the description of the tenanted premises in both the suits. It is therefore necessary to ascertain and bring on record the exact measurement of the tenanted premises. The trial Court ought to have appointed a technical person from the Land Record Office, Nandura as the Court Commissioner, to carry out the measurement.

7. It appears that both the suits i.e. R.C.S. No.35 of 2012 and R.C.S. No.14 of 2013 filed by the tenant and the landlord respectively are being tried together. In R.C.S. No.14 of 2013, issue no.1 is framed in respect of the description area of the tenanted premises. Both the parties are under obligation to prove the area of tenanted premises by leading evidence before the trial Court. The suit is not for removal of encroachment for which, a Court Commissioner needs to be appointed. In that view of the matter, there is no substance in the contentions of the Petitioner that appointment of the Court Commissioner is necessary. It appears that the Petitioner is trying to collect the evidence through the Court Commissioner and it is not necessary to appoint the Court Commissioner in the facts of the case.

8. The trial Court has rightly rejected the application by giving cogent reasons. No case is made out by the Petitioner to interfere in the writ jurisdiction. Writ Petition No.1286 of 2020, is therefore, **dismissed**.

JUDGE