

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO.14935 OF 2021

KHARBHARI NANASAHEB NAALE
VERSUS
JAGNNATH KESHAVRAO GAIKWAD AND OTHERS

Mr.PF. Patni, Advocate for the petitioner.

CORAM : ANIL L. PANSARE, J.
DATED : 15.07.2022

PC :-

01. The petitioner is aggrieved by the order dated 01.10.2020 passed by the learned 3rd Joint Civil Judge, Junior Division, Vaijapur, below Exh.18 in RCS No.307 of 2015.

02. By the impugned order, the learned Judge has rejected the application filed by the petitioner seeking appointment of the Court Commissioner. The application has been rejected mainly on the ground that by such prayer, the petitioner intends to collect the evidence, which is not permissible in view of the settled position of law.

03. Having heard the learned Advocate for the petitioner and having gone through the application Exh.18, filed by the petitioner before the Trial Court, the main contention of the petitioner before the Trial Court, so also before this Court is that on 15.07.2020, pending the suit, the defendant in connivance with the Tahsildar has brought bulldozer at the disputed land and

removed boundary (Bandh) dividing two lands and the aim of the petitioner for appointment of the Commissioner is to bring on record the present status of the property. This, according to the learned Advocate for petitioner, does not amount to collecting the evidence.

04. I do not find substance in the aforesaid contention. The act of the defendant to bring the bulldozer at the dispute land and remove the boundaries (Bandh) is something that is to be proved by the petitioner/original plaintiff by leading evidence. The Commissioner cannot be appointed under Order 26 Rule 9 of the Code of Civil Procedure for such purpose. The learned Judge is fully justified in rejecting the application. Therefore, the petition stands dismissed.

[ANIL L. PANSARE,J.]