

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.1826 OF 2014
WITH WP/4057/2014**

**AJINATH RAMBHAJI ZAMBRE
VERSUS
GRAMPANCHAYAT, HINGANI AND OTHERS**

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Advocate for Petitioner : Mr. Bhapkar S.l.
Advocate for Respondent No. 4 : Mr. R.C. Bramhankar h/f.
Mr. N L Jadhav.
Advocate for Respondent No. 5: Mr. Anand. Bhandari.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st MARCH, 2022

ORDER :

1. The Petitioner is aggrieved by the order passed by Civil Judge Junior Division, Ashti, below Exhibit-19 in Regular Darkhast No.2/2014, thereby allowing the application filed by Respondent No. 5 under Section 151 of the Code of Civil Procedure, for appointment of Court Commissioner.

2. According to the petitioner, respondent No.5 is a stranger and he was not a party to the Suit or Regular Darkhast. His application filed under Section 151 of the Code of Civil Procedure seeking appointment of Court Commissioner is wrongly allowed by

the executing Court.

3. Regular Civil Appeal No.02/2006 filed by the petitioner challenging dismissal of his suit i.e. R.C.S. No.249/2000, is partly allowed by the appellate Court. Perpetual injunction is granted in favour of the petitioner to the effect that defendants/respondents shall not disturb possession of the suit property bearing house No.99, ad-measuring 60 Ft. x 85 Ft. to the extent of half share and shall not demolish construction of the petitioner/plaintiff over the suit property till evicted by following the due process of law.

4. Regular Darkhast No.02/2014 is filed by the petitioner for execution of the said decree. In the said Darkhast the application is filed by respondent No.5 seeking appointment of Court Commissioner contending that while construction of Sabha Mandap of Vitthal Rukhmini Temple is in progress, the petitioner – decree holder is obstructing the same contending that the construction is being made on his property No.99. The said construction is being carried out in Gram Panchayat property Nos. 95 and 96 and not on the property of petitioner – decree holder, still he is causing obstruction. Therefore, it is necessary to appoint a Court

Commissioner for measurement of Sabha Mandap in Gram Panchayat property Nos. 95, 96 and 99. The said application is allowed by the executing Court holding that to bring the correct factual position on record it is necessary to appoint a Court Commissioner. Therefore, the executing Court appointed Advocate B. D. Ekashinge as a Court Commissioner.

5. Heard the rival submissions of the learned advocate for petitioner and respondents.

6. Considering the facts on record, I am of the view that the executing Court was justified in appointing a Court Commissioner to measure the properties. No prejudice is likely to be caused to the petitioner if measurement of the said properties is carried out. However, when the work of measurement is to be carried out and map is to be prepared, it would have been appropriate on the part of the executing Court to appoint T.I.L.R. being expert in that behalf.

7. In the result, writ petition is partly allowed. The appointment of Advocate B.D. Ekashinge as a Court commissioner is hereby set aside. The T.I.L.R., Ashti, is appointed as Court Commissioner who, after issuing notice to the concerned parties,

shall carry out the measurement of property Nos. 95, 96 and 99 and the Sabha Mandap and submit report and map to the executing Court within a period of four weeks from the date of receipt of the copy of this order.

8. Writ petition is disposed off in the above terms. No costs.

[NITIN B. SURYAWANSHI]
JUDGE