

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

WRIT PETITION NO.4532 OF 2022

**SANGEETA BALU DHAVDE THR HER GPA HOLDER BALU GORAKH
DHAVDE
VERSUS
SANGITA EKNATH VEER AND OTHERS**

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Advocate for Petitioner : Mr. Palodkar Devdatt P
Advocate for Respondent No.1: Mr. Prashant N. Khedkar

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**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 22nd April, 2022**

P C. :

1. The Petitioner is aggrieved by the order passed by the learned Civil Judge, Senior Division, Shrigonda below Exhibit-105 in Special Civil Suit No.35/2017, thereby allowing the said application for appointment of Court Commissioner.
2. The Petitioner is the Original Plaintiff, who has filed the suit, seeking various reliefs, including setting aside of the sale deed in favour of the Respondents, for measurement of land and fixing the boundaries of the suit properties. Earlier, the Respondent No.1/Defendant No.1 filed application (Exhibit-68) seeking appointment of Court Commissioner, which was allowed and the Deputy Superintendent of

Land Records, Shrigonda was appointed by the Trial Court. The said order was challenged by the Petitioner by filing Writ Petition No. 5269/2020. The petition came to be allowed and the order appointing Court Commissioner was quashed and set aside.

3. The Respondent No.1/Defendant No.1 thereafter, filed counter claim for relief of measurement and demarcation of boundaries of the disputed properties and also sought perpetual injunction. After filing of the said counter claim, the Respondent No.1 filed application Exhibit-105, seeking appointment of Court Commissioner, which is allowed by the Trial Court. Hence the present petition.

4. Having heard the rival submissions of the learned Advocate for the parties and after considering the documents filed on record, it is clear from the record that in Writ Petition No. 5269/2020 this Court set aside the earlier order of appointment of Commissioner on the ground that the Respondent No.1 had not filed any counter claim for protecting her possession. Admittedly, the Respondent No.1 has filed additional written statement and counter claim to the amended plaint of the Petitioner/Plaintiff and sought relief of measurement of the properties

mentioned in the counter claim and for fixing the boundaries and also sought permanent injunction. There is a dispute between the Petitioner and Respondent No.1 about the possession of the disputed properties and their boundaries. Admittedly, the Petitioner/Plaintiff as well as Defendant No.1, both have claimed a relief of appointment of Court Commissioner to measure the lands and fix the boundaries. Therefore, it is necessary to appoint expert to measure the land and fix the boundaries. In the facts of the present case, appointment of Court Commissioner is necessary to decide the real controversy between the parties.

5. Taking into consideration the prayers made in the plaint as well as in the counter claim, no fault can be found with the order passed by the Trial Court. The appointment of Court Commissioner would help the Trial Court to decide the real controversy and resolve the dispute between the parties. Since the Deputy Superintendent of Land Records, Shrigonda is appointed as a Court Commissioner, who is directed to visit the suit properties as well as the properties mentioned in the counter claim and measure the same in terms of the sale deeds of the respective parties and fix the boundaries and submit the actual map on record, this

Court is of the considered view that no prejudice is likely to be caused to the Petitioner by the said order.

6. The Trial Court has passed a reasoned order. No case is made out for interference in the extraordinary writ jurisdiction. Writ Petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]

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