

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

WRIT PETITION NO.14861 OF 2021

KEVLABAI BHIMRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA THR TAHSILDAR SENGAR AND
OTHERS

...

Advocate for the Petitioner : Shri Chavan Sudhir K.
AGP for the Respondents/ State : Shri Kiran B. Jadhavar

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 03rd February, 2022

Per Court:

1. Heard the learned counsel for the petitioner and perused the impugned order.

2. The petitioner is the original plaintiff, who has instituted RCS No.130/2020 for declaration of ownership, perpetual injunction and the NA permission granted on 17.10.2011 being not binding upon her.

The contesting parties i.e. defendant Nos.5 and 6 appeared and filed the Written Statement opposing the pleadings.

3. In the suit, the plaintiff filed an application below exhibit-5 seeking injunction. During the pendency of the said application, the petitioner/ plaintiff took out an application by invoking Order 39 Rule 7 of the Code of Civil Procedure, seeking inspection of the spot and this

application exhibit-32 came to be rejected under the impugned order passed on 23.11.2020.

4. On perusal of the impugned order, it can be seen that the learned Judge has considered the application filed by the plaintiff for appointment of the TILR as the court commissioner, in the backdrop of the case pleaded by her in the plaint where, she claimed her ownership and possession over the suit property whereas, the contesting defendants have traversed said specific pleading of the plaintiff.

5. Considering the scope of Order 39 Rule 7, which referred to the powers of the Court to grant an application of any party to the suit for detention, inspection, preservation, etc. of the subject matter of the suit, if it is necessary or expedient for the purpose of obtaining full information or evidence. The purport of the said provision being clear, the learned Judge arrived at the conclusion that the plaintiff, who claimed ownership and possession over the suit property, can produce necessary evidence in the form of affidavit of witnesses while deciding the application vide exhibit-5, but she cannot seek appointment of the court commissioner to bring on record the evidence, which would support her case.

6. It being settled position of law that the court commissioner cannot be appointed to collect evidence on behalf of the parties and since the plaintiff stakes her claim on the basis of the possession and ownership, she must establish the same before she is granted any relief of temporary

injunction.

7. In the wake of the above, the impugned order does not suffer from any legal infirmity and deserves to be upheld. Necessarily, the Writ Petition is dismissed.

kps

(SMT. BHARATI H. DANGRE, J.)