

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

905 WRIT PETITION NO.126 OF 2022

**HARIBAI MANIKRAO NAWLE
VERSUS
KUNDLIK VITHALRAO WAGH AND OTHERS**

...
Advocate for Petitioner : Mr. S.M. Kshirsagar h/f Mr.P N Kalani
...

CORAM : ANIL L. PANSARE, J.

DATE : 09.06.2022.

PER COURT :

1. The petitioner has challenged the orders dated 06th February, 2020 passed by the learned Civil Judge Senior Division Parbhani below Exh. 47 & and Exh. 49 in R.C.S. No.283 of 2014, thereby rejecting the prayer of the petitioner to appoint the Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure. The petitioner is the original plaintiff in Regular Civil Suit before the trial Court. The suit has been filed for partition and separate possession & ownership over the suit property.

2. By filing application Exh. 47 the petitioner-original plaintiff has sought appointment of the Court Commissioner to inspect the suit premises on the ground that the defendant No. 3 before the trial Court, has demolished the wall of two rooms and

converted a house of five rooms into four rooms. The learned Judge of the trial Court has recorded that the suit is at the stage of evidence and noted that the suit is for partition and separate possession, the petitioner is claiming 1/3rd share in the suit house. The petitioner has not disclosed the purpose of filing of application for appointment of Court Commissioner. In view thereof, considering the nature of the suit the application of the petitioner before the trial Court Exh. 47 came to be rejected.

3. So far as the application at Exh. 49 is concerned, the appointment of Court Commissioner has been sought on the ground that defendant No. 3 before the trial Court has made false statement. The local inspection of the suit property is required to ascertain the correctness of pleadings of defendant No. 3. The learned Judge of the trial Court held that the Court Commissioner cannot be appointed for ascertaining the correctness of the pleadings and accordingly rejected the application.

4. It is settled position of law that the Court Commissioner cannot be appointed to collect the evidence. Further the petitioner has filed the suit for declaration of ownership and for partition. The petitioner failed to point out either through application made before the trial Court or during the course of arguments as to how the

alleged act of demolition of internal wall is relevant vis-a-vis nature of reliefs sought. Further the learned Judge of the trial Court is correct in holding that the Court Commissioner cannot be appointed to ascertain the pleadings of the parties. In that view of the matter, no fault could be attributed to the learned Judge in rejecting the application. There is absolutely no merit in the petition. Accordingly, the petition stands dismissed.

(ANIL L. PANSARE)
JUDGE

mahajansb/