

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.14897 OF 2021

ASHOK SUKHDEV AGRAWAL (PATWARI)  
VERSUS  
RAKHI SANJAY SISODIYA AND ANOTHER

Mr.S.V.Suryawanshi, Advocate for the petitioner.

( CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 12, 2022

PER COURT :

1. Heard the learned counsel for the petitioner, who is the original plaintiff, who has instituted Spl.C.S.No.97/2020, seeking a declaration and permanent injunction against the respondents qua the suit property set out in paragraph no.1 of the plaint, which is described by giving its area and other specifications. The plaintiff has claimed that he is in possession of the suit property since 20/06/2017 when an agreement to sell was executed for consideration of Rs.63,50,000/- with defendant No.2.

The defendant No.1 filed a written statement and denied the description of the suit property and specifically pleaded that the suit property, comprised only of ground floor and first floor and denied that

the suit property is a 3 storied building.

2. In the wake of the said denial coming forward from defendant No.1, promptly the plaintiff took out an application under Order XXVI Rule 7 r/w Section 151 of the CPC, seeking appointment of Court Commissioner to prepare the map of the suit property by indicating the possession. The impugned order passed below Exh.24 by the learned Joint Civil Judge, Sr.Dn. Jalgaon on 07/07/2021, rejected the said application and is assailed by the petitioner in the present writ petition.

It is trite position of Law that the provision contained in Order XXVI Rule 9 cannot be invoked to collect the evidence which can be taken in Court but only in peculiar circumstances, the Court Commissioner can be appointed. The plaintiff and the defendants are expected to discharge the burden in support of the pleadings made by by either in the plaint or in the written statement. The assistance of the report of the Court Commissioner cannot be sought to discharge the respective burden and relying upon the settled position of Law, by the impugned order reject the said application. The learned Judge has referred to various Authorities' pronouncements on the said point, which unequivocally lay down a preposition of Law that the Court

Commissioner cannot be appointed to bring the evidence on record in support of the claim of the plaintiff/defendant.

The impugned order do not call for any interference and is upheld. The writ petition filed by the petitioner deserves a dismissal and is accordingly dismissed.

( BHARATI H. DANGRE, J.)