

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2241 OF 2022

(Rajesh Namdeorao Jadhav Vs. Manohar Pundlikrao Chavhan (Deshmukh) and
another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. S. S. Alaspurkar, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 26th APRIL, 2022.

The petitioner is the defendant 1 in Regular Civil Suit 10/2021 instituted by the respondent 1 for injunction and removal of encroachment.

2. The plaintiff preferred an application for appointment of Commissioner to measure the suit plot admeasuring 39.02 square meters.

3. The defendant 1 objected to appointment of Commissioner *inter alia* on the premise that Commissioner cannot be appointed to collect evidence.

4. The learned trial Judge allowed the application for appointment of Commissioner vide order dated 06.10.2021. The defendant 1 took no steps to challenge the said order with promptitude and this petition is filed on 25.04.2022. In the meanwhile, the writ of appointment of the

Commissioner was issued by the trial Judge, all the formalities are complete and the commission is to be executed on 27.04.2022. The learned counsel for the petitioner invites my attention to the decision of a learned Single Judge in ***Mahadeo Kondiba Shinde v. Nitin Sakharam Shinde & Anr. 2022(2) ALL MR 593***, and in particular to the observations in paragraph 17 which read thus:

17. In view of the same, and since there are catena of judgments and orders passed by this court taking consistent view, in the instant case, the order impugned is premature one. The parties have not yet stepped into witness box. The trial court may appoint the court commissioner if the same appears to be necessary to elucidate the matter in dispute. Thus, the order impugned is liable to be set aside with liberty to the parties to file an application for appointment of T.I.L.R. as Court Commissioner at the stage of evidence.

5. I am not inclined to entertain the petition for reasons more than one. It is well settled, that the writ Court may refuse to exercise jurisdiction even if the order impugned is erroneous. In the present case, I see no prejudice whatsoever if the Commissioner is appointed and is permitted to execute the commission. The case is of encroachment and ordinarily encroachment or a dispute as regards the boundary would involve facts which cannot be perceived by the naked eye and unless there is an inspection and map drawn by an expert, it would be very difficult for the Court to come to any conclusion. In any event, the

petition is grossly delayed considering the circumstances and further there is no miscarriage of justice which is demonstrable. As noted supra, appointment of Commissioner can only be in the interest of both the stakeholders.

6. The petition is dismissed.

JUDGE

NSN