

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

WRIT PETITION NO. 3424 OF 2021

Shri Suryakant s/o Shankarappa Trakantwar,
Aged 57 years, Occupation – Agriculturist,
R/o Shradha Nagar, Pusad, Tahsil – Pusad,
District – Yavatmal.

.... **PETITIONER**

VERSUS

Shri Rajeshwar s/o Shankarappa Trakantwar,
Aged 55 years,
Occupation – Agriculturist/Private Service,
R/o C/o Dwara Lokhande, Shankar Nagar,
Near Gajanan Mandir, Pusad, Tahsil – Pusad,
District – Yavatmal.

.... **RESPONDENT**

Mr. M.A. Vishwarupe, Counsel for the petitioner,
Mr. S.A. Chaudhari, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 25th FEBRUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner is the defendant in Regular Civil Suit 87/2019 instituted by the respondent seeking decree of perpetual injunction.

3. The substratum of the plaint is that the plaintiff is the owner of

agricultural land admeasuring 1.43 hectares situated at village Warud and is in possession by virtue of registered sale-deed. The simple case of the plaintiff is that the defendant is attempting to disturb the possession qua portion admeasuring 0.32 hectare.

4. The case of the defendant is, that he along with the plaintiff agreed to purchase land in equal measure. However, due to certain technical difficulty, land admeasuring 2.64 hectares was purchased in the name of the plaintiff and land admeasuring 2.00 hectares was purchased in the name of the defendant. Incidentally, the plaintiff and the defendant are real brothers.

5. The defendant has lodged a counter-claim which also seeks injunctive relief qua the portion 0.32 hectare on the premise that in view of the unequal purchase, the plaintiff agreed to hand over area admeasuring 0.32 hectare to the defendant, and that, the defendant is, as a fact, in possession of the said area admeasuring 0.32 hectare.

6. I note that the suit and the counter-claim seek injunction simplicitor. The issue is 'who is in possession'. It is not in dispute that the plaintiff is the registered owner of the portion of land which is in dispute. It would be for the parties to prove their respective cases,

depending on the burden cast as and when the issues are framed, and the learned trial Judge has rightly held that a court commissioner cannot be appointed to collect the evidence.

7. Needless to say, that if after the parties adduce evidence, the learned trial Judge finds it necessary to appoint court commissioner to elucidate or seek clarification, it shall always be open for the learned trial Judge to take recourse to Order XXVI Rule 9 of the Civil Procedure Code, if deemed necessary.

8. At this stage, there is no need to appoint court commissioner.

9. I see no reason to interfere with the order impugned.

10. The petition is dismissed.

JUDGE

adgokar