

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1563 OF 2019

Gangabai w/o Narayan Patel
Vs.
Fateh Khan s/o Sardar Khan

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.R. Dawda, Advocate for petitioner.

CORAM : MANISH PITALE J.

DATE : 18.07.2022.

By this writ petition, the petitioner i.e. original plaintiff is before this Court challenging an order dated 29.10.2018, passed by the Court below whereby an application for appointment of Court Commissioner for measurement of the suit property was rejected. The Court below has observed that the petitioner cannot be permitted to collect evidence, hence, the application is rejected.

2. In this writ petition, on 26.02.2019, notice was issued and ad-interim stay of the proceedings in the pending suit was granted. The respondent was served but he has chosen not to appear before this Court.

3. This Court has perused the plaint averments as also the prayer made therein. It appears that the case of the petitioner is that, according to her, the respondent is seeking to dispose of certain plots of land, which actually belong to her. This is specifically denied by the respondent in the written statement and it is claimed that while some portion of Survey No.10/2, does belong to the petitioner, but the remaining portion belongs to the respondent. It is denied that the respondent in any manner is seeking to encroach upon or dispose of the suit property.

4. It is in this backdrop that the petitioner had moved the said application for appointment of the Commissioner so that the ground reality could be clarified and the contentions raised on behalf of the petitioner could be supported. This application was opposed by the respondent.

5. As noted above, the Court below has rejected the application solely on the ground that the petitioner, as the plaintiff, cannot be allowed to collect evidence.

6. This Court is of the opinion that considering the pleadings on record, the manner in

which the respondent has denied the claim of the petitioner and the subject matter of the suit, it would be in the interest of justice, if the prayer made on behalf of the petitioner for appointment of Taluka Inspector of land records as Court Commissioner is granted. The joint measurement sought on behalf the petitioner cannot be termed as an attempt to collect evidence because the report of the Court Commissioner, would certainly assist the Court below in rendering findings of facts. Needless to say, the parties would be at liberty to examine the Court Commissioner after the report is submitted.

7. The said exercise would not put any of the parties to any prejudice.

8. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside and the application at Exhibit 54 is allowed in terms of prayer made therein.

JUDGE