

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

WRIT PETITION NO. 4373 OF 2022

Sangita Shivaji Gaikwad .. Petitioner

Versus

Rajabhau Laxman Gore and another .. Respondents

Shri Nitin L. Dhobale, Advocate for the Petitioner.

Shri I. D. Maniyar, Advocate for the Respondent Nos. 1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30TH JANUARY, 2023.

FINAL ORDER :

. Heard.

2. The petitioner is aggrieved by the order dated 04th December, 2021, whereby petitioner's application for appointment of Court Commissioner came to be rejected.

3. The petitioner is original defendant in a suit bearing R.C.S. No. 92 of 2020 filed by the respondents for perpetual injunction, in which a counter claim has been preferred by the petitioner, who is original defendant, also seeking an order of perpetual injunction.

4. It appears that, the properties of the petitioner and the respondents are adjacent to each other and rival claims have been raised that each of the parties are trying to disturb the

other party's enjoyment of the suit property. Prior to the hearing of Exhibit 05 application for temporary injunction, an application came to be filed by the petitioner dated 08th March, 2021 seeking appointment of Court Commissioner for local inspection under Order XXXIX Rule 7 of the Code of Civil Procedure for the purpose of ascertaining whether there are electricity meters or water connections or tin shed structures on the suit property. It is the case of the petitioner in the application that the said report is necessary for deciding Exhibit 05 application.

5. The application for local investigation for the purpose of ascertaining existence of water connection or electricity meter cannot be used for the purpose of deciding Exhibit 05 application, which is required to be decided on the basis of the possession. The application preferred by petitioner seeking local investigation under Order XXXIX Rule 7 of the Code amounts to collection of evidence. It is for the parties to establish a *prima facie* case of possession for seeking restrain orders as against other party. The suit is not about encroachment or about any boundary dispute in as much as properties of the petitioner and the respondents are different and neither is claiming any right in each others property, but only issue is regarding perpetual injunction restraining the other party from interfering in the peaceful enjoyment of each others properties.

6. Considering the above, it is not necessary to appoint Court Commissioner for local investigation to be carried out for the purpose of establishing existence of electricity connection or

water connections in the property of which evidence can be led at the time of trial by examining necessary witnesses. At this stage of deciding application for temporary injunction, said local investigation is not necessitated.

7. For the reasons above, there is no merit in the writ petition. The writ petition stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23