

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7169 OF 2023

Gafar Ismail Munjewar

.... Petitioner

Versus

Moinoddin S/o Bandeali Shaikh
and others

.... Respondents

.....

Mr. Nikhilesh K. Tungar, Advocate for the Petitioner

Mr. V.V. Bhavthankar, Advocate for Respondent Nos. 1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th OCTOBER, 2023

ORDER :

1. Leave to correct the prayer clause.
2. Appointment of Court Commissioner at a premature stage is impugned in the present petition.
3. Petitioner has filed suit for fixation/demarcation of boundaries of suit land, and for perpetual injunction and mandatory injunction against respondents/defendants. Defendants opposed the suit by filing written statement. Petitioner filed application Exhibit-28 for appointment of Court Commissioner. The said application is rejected by the Trial Court. Hence, the present petition.

4. Heard learned advocate for the petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and impugned order.

5. Learned advocate for petitioner by relying on decision of learned Single Judge in Writ Petition No.10180 of 2018, submits that application Exhibit-28 deserves to be allowed.

6. Learned advocate for respondents, on the other hand, opposed the petition, contending that during the pendency of suit, on 05/07/2023, plaintiff has sold part of the suit property. According to him, therefore, plaintiff is very well aware to the boundaries of the suit property. By this application, plaintiff is trying to collect evidence, which is not permissible.

7. There appears substance in the contention of learned advocate for respondents that since petitioner is aware of the boundaries, he has executed the sale deed of part of the suit property during the pendency of suit. Apart from this, application is filed by petitioner at a premature stage, even issues were not framed. This Court has consistently taken a view that appointment of Court Commissioner should not be

made before parties conclude their evidence. In that view of the matter, this Court is not inclined to interfere in the impugned order at this stage.

8. Order passed in Writ Petition No.10180 of 2018 is passed in different facts. Hence, it is of no assistance to the case of petitioner.

9. For these reasons, there is no merit in the Writ Petition. The Writ Petition is therefore dismissed with liberty to the parties to file application for appointment of Court Commissioner after conclusion of recording of evidence.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane