

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

WRIT PETITION NO. 10918 OF 2017

Vasantrao Pundlik Shimpi

.. Petitioner

Versus

Jasodabai Narayandas Mukhiya
and others

.. Respondents

Shri Mukul S. Kulkarni, Advocate for the Petitioner.

Shri A. P. Bhandari, Advocate for the Respondent Nos. 3(A), 3©,
3(D) and 4 to 6.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 05TH JANUARY, 2023.

FINAL ORDER :

. Heard learned counsel appearing for the parties.

2. The petitioner is aggrieved by the order dated 04th July, 2017 passed by the Civil Judge Senior Division, Dhule in R.C.S. No. 17 of 2008, rejecting the application of the petitioner/plaintiff for appointment of Court Commissioner.

3. R.C.S. No. 17 of 2008 was filed by the petitioner seeking a direction to the respondents/landlord to carry out the repairs to the suit premises. By written statement, respondents denied the claim of the petitioner and filed a counter claim for a direction to the petitioner to remove his belongings to permit the respondents to demolish the structure on the ground that same is in dilapidated condition. In support of his case the respondents had examined one Yogiraj Shivajirao Marathe claiming to be the adjacent land owner, who has deposed that the structure on CTS

No. 3216, which is subject matter of the proceedings has collapsed and that there was no shop on the said land. Pursuant thereto petitioner filed an application claiming that the deposition of said Yogiraj Marathe mentioning that there is no shop on the premises is false and Court Commissioner be appointed to visit the spot.

4. I have considered the submissions made by the learned counsel for the petitioner. As I am not inclined to interfere in the impugned order, the learned counsel for the respondents has not been called upon to argue.

5. The purpose of Order XXVI Rule 9 of the Code of Civil Procedure is not to collect evidence, but the appointment of Court Commissioner is to be made in the peculiar facts and circumstances of the case when the matter in dispute cannot be resolved except through spot inspection as for example in the case of dispute with regard to location and boundaries of the property. In the present case in relation to the evidence of Yogiraj Marathe, which the petitioner claims to be a false evidence appointment of Court Commissioner is sought. In my view the same amounts to collecting evidence through the Court Commissioner. The parties are at liberty to make necessary submissions in respect of deposition of the said Yogiraj Marathe during the arguments and it is not necessary for appointment of Court Commissioner in order to dispute the deposition of said Yogiraj Marathe. Learned counsel for the petitioner relies upon the decision of this Court in the case of **Mahadeo Kondiba Shinde Vs. Nitin Sakharam Shinde and others** reported in **2021(5) AIR Bom R. 98**. There is no quarrel with the proposition laid down in

the said decision. In the case of **Mahadeo Kondiba Shinde Vs. Nitin Sakharam Shinde and others** (supra), this Court observed that the object of local inspection is not to collect the evidence, which can be given in the Court but to obtain the evidence for elucidating the matter. Learned counsel for the petitioner submits that in the present case due to evidence of said Yogiraj Marathe, it is necessary that the Court Commissioner be appointed so that matter can be clarified. I do not agree with the submission for the reason that the Petitioner has to prove his own case and merely because there is adverse deposition by one of the witness, for the purpose of clarifying the deposition Court Commissioner cannot be appointed.

6. Considering the aforesaid, I am not inclined to interfere in the impugned order. The writ petition is devoid of merits. Same is dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23