

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

14 WRIT PETITION NO.12346 OF 2023

INDRACHAND KHUSHALCHAND MUTHA
VERSUS
UTTAMCHAND KHUSHALCHAND MUTHA AND OTHERS

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Advocate for Petitioner : Ms. Anagha Vasantrao Rotte.
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CORAM : S. G. MEHARE, J.
DATE : 20.10.2023

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner, the plaintiff in Special Civil Suit No.13 of 2021 had filed a suit for partition, separate possession and mesne profit.
3. Hearing respective parties, the learned Trial Court ordered both parties to maintain *status quo*.
4. The petitioner had filed an application for appointment of Court Commissioner and the receiver. It has been submitted that defendant No.1 was intentionally changing the nature of the suit premises by demolishing a wall of the suit property and had constructed the tin shed with an intention to change the nature of the property to defeat the interest of the plaintiffs. The son of the plaintiff was dispossessed from the suit premises. Hence, he is residing on rent at another place.

The suit property is located in a prime area. Hence, to avoid the further complications, it is necessary to appoint the Court receiver under Order XL Rule 1 of the C.P.C with the direction to take the custody of the suit property in his possession and submit his report by taking the photographs and measurement of the suit property. In application for appointment of Commissioner, it has been submitted that defendant No.2 is only residing in the suit premises and carrying on the business. The suit premises is 68 Sq.Ft. After issuing the *status quo* orders on 07.08.2021, the defendants back and behind the plaintiff, demolished the wall in southern side of the suit property, between the shop and residence of defendant No.2. In this way, he has changed the nature of the suit premises. Demolishing the wall, he had disobeyed the *status quo* order. In the facts and circumstances of the case, the Court Commissioner be appointed directing him to submit his report by taking photographs and measuring the suit property.

5. On reading the contents of both applications, the prayer seems to be similar.

6. Learned counsel for the petitioner would submit that to avoid the further complication and multiplicity of the suit, the Court Commissioner and receiver is essential to be appointed.

The suit premises is valuable and located in the prime area of the town. Hence, to protect the interest, both applications have to be allowed.

7. To bolster her argument, she relied on the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and others; (2021) 6 SCC 418***. It was a petition arising out of the execution proceeding. The facts of that case are altogether different from the facts of the case in hand.

8. The Court Commissioner and receiver should not be appointed as matter of course. There shall be circumstances and Court should feel it appropriate to appoint the receiver for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof. Herein the case, the suit is for partition, separate possession, mesne profit and injunction. One of the defendants is running the business in the suit premises partly and residing in the adjoining portion of suit premises. It is the case of the plaintiff that son of the plaintiff had been dispossessed. For the dispossession, a legal remedy was available to him. The plaintiff is claiming the mesne profit after the partition. The question whether the suit property is a joint family property and whether all parties have the interest is the

prime issue in the suit. Defendant No.2 is running his business. So what type of his business is, what income he is getting etc. all these factors need to be proved by the plaintiff on producing appropriate evidence.

9. As far as the status of the property is concerned, it has already been come on record. If any changes have been made in the property after the *status quo* order, legal remedy is available. Any party concerned suffering has to move appropriate application to the concerned Court. Everything which required for the adjudication of the suit is to be brought on record by the parties concerned. Considering the nature of the suit, the material available on record, there appears not appropriate, just and convenient to appoint the Court Commissioner and the receiver.

10. The learned Trial Court has correctly considered the facts and rejected both the applications. There is no substance in the writ petition. Hence, writ petition stands dismissed at admission stage.

(S. G. MEHARE, J.)

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vmk/-