

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO.994 OF 2023

BALAJI MADHAVRAO KURE
VERSUS
VIJUBAI RAMRAO PAWAR AND OTHERS

Mr. Santosh S. Jadhavar, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 31, 2023.

PER COURT :

1. Heard.
2. By this petition, the petitioner challenges the order dated 1st September, 2022 passed by the learned Joint Civil Judge, Junior Division, Loha, District Nanded, rejecting the petitioner's application for appointment of Court Commissioner, preferred under Order 26 Rule 9 of the Code of Civil Procedure, 1908.
3. RCS No.128 of 2022 was instituted by the Petitioner seeking order of permanent injunction against the respondents from interfering with the peaceful possession of the Petitioner in respect of the area admeasuring 1 H 72 R out of Gut no. 272, on the ground that the same was purchased by the Petitioner by sale deed of the year 2011. Counter claim came to be filed by the Respondents claiming ownership in respect of area admeasuring 1

H 5 R out of Gut no.272 and seeking perpetual injunction against the Petitioner from interfering with their enjoyment of the property. An application was preferred by the Petitioner seeking measurement of the suit property for fixation of boundary marks through the appointment of the Court Commissioner.

4. Learned counsel for the Petitioner contends that there is a dispute about the boundaries and as such the appointment of the Court Commissioner was necessitated.

5. Perused the papers and proceedings of RCS No.128 of 2022. It is the case of the Petitioner that by virtue of sale deed dated 29th December, 2011, the Petitioner is owner of 1 H 72 R land out of Gut No.270 and respondent's deceased father was in possession of 1 H 5 R out of the same gut number and taking advantage of the mutation entries, the Respondents are interfering with the possession of the Petitioner by raising boundary disputes. Reading of the plaint does not reveal that there is any dispute about the boundaries of the plot in respect of which the ownership is claimed by the Petitioner and the respondents. Petitioner claims ownership in respect of 1 H. 72 R wherein Respondents claim ownership in respect of 1 H 5 R out of gut No.270. In the plaint, it is the case of the Petitioner that by raising boundary disputes, the respondents are entitled with the possession. The plaint does not reveal boundary dispute and in fact, proceeds on the footing that by virtue of the sale deed of the year 2011, the Petitioner is in possession of 1 H. 72 R, the boundaries whereof are mentioned in

the description at paragraph 1 of the plaint. Learned counsel for the Respondents has not been able to demonstrate that in their counter claim dispute of boundaries has been raised.

6. Considering that the plaint and the counter claim does not reveal any boundary dispute and claims for perpetual injunction as against each other has been raised, this is not a fit case for appointment of Court Commissioner.

7. Considering the above, there is no merit in the writ petition. Writ Petition stands dismissed.

8. The Trial Court will decide the suit on its own merit and uninfluenced by the observations made herein above, which are made in the context of deciding the validity of the impugned order.

(SHARMILA U. DESHMUKH, J.)