

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10360 OF 2023

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Date: 2023.08.23
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Dattu Laxman Gaikwad (Since Decd.)

Thr. LRS. And Ors.

... Petitioners

V/s.

Sunil Judomal Kukreja and Ors.

... Respondents

Mr. Kedar P. Lad, for the Petitioners.

Mr. C.D. Mali, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2023

P.C.:

1. The petitioner is original plaintiff who has filed suit for injunction against defendant Nos.1, 2 and 3 not to disturb his possession over the suit property.
2. Initially Court commissioner was appointed to bring on record factual position of the suit property. The Court Commissioner inspected the suit property and submitted his report.
3. The petitioner filed an application alleging that the report filed by the Court Commissioner is in collusion with defendant and therefore action under the provisions of the Contempt of Court's Act 1971, needs to be initiated.

4. Said application was rejected by the Trial Court. Again, similar application was filed by the plaintiff which was also rejected by the Trial Court.
5. The petitioner thereafter, filed present application for appointment of Court commissioner which came to be rejected by impugned order.
6. The learned advocate for the applicant states that such appointment is necessary in the interest of justice. However, on perusal of the suit and the material placed on record, it is clear that the Court commissioner has already submitted its report. The evidentiary value of such report is a matter which needs to be decided by the Trial Court during hearing of the suit.
7. However, once in a suit for injunction, restraining defendants from disturbing possession of the plaintiff, Court Commissioner is appointed, there cannot be fresh appointment of such Commissioner. In that view, the reasons assigned by the Trial Court cannot be termed as perverse hence interference under Article 227 is called for.
8. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)