

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2446 OF 2023

Shri. Abhiman Ananda Sonawane

.. Petitioner

V/s.

Shri. Keda Ananda Sonawane & anr.

.. Respondents

...

Mr. Rameshwar N. Gite, Advocate for the Petitioner.

...

CORAM : SANDEEP V. MARNE, J.

DATED : JULY 28, 2023.

P.C. :

1. By this petition, Petitioner challenges order dated September 15, 2022 passed by the Jt. Civil Judge Junior Division, Malegaon, Nashik rejecting Petitioner/Plaintiff's application for appointment of Court Commissioner for measurement of land under the provisions of Order 26 Rule 9 of the Civil Procedure Code.

2. Petitioner-Plaintiff has filed the suit for a declaration

that the Defendants have encroached upon the land of the Plaintiff. A prayer is also made for possession of the encroached portion of the land. Injunction is also sought against the Defendants from committing further encroachments. Alongwith the plaint, Petitioner filed application at Exhibit-5 for appointment of Taluka Inspector of Land Records/City Survey Officer as Court Commissioner for measurement of the land. It appears that the suit has proceeded *ex-parte* on account of non-appearance of the Defendants.

3. In the present case, Plaintiff filed application for appointment of the Court Commissioner alongwith the suit. This would clearly indicate an attempt on the part of the Plaintiff to collect evidence rather than making any attempt to lead evidence of encroachment. Be that as it may, the Plaintiff will have to first adduce evidence in support of his contention that there is encroachment over his property by the Defendants. There appears to be no defence in the suit. Upon production of evidence by the Plaintiff, if the Court forms an opinion that an elucidation is required with regard to the exact position at the site, it is always open for the Court to appoint a Court Commissioner. On the other hand, if the Court is of the opinion that the suit of the Plaintiff can be decided without any need for appointment of Court Commissioner in absence of any defence by the Defendants, the Court can proceed to decide the suit. At this

juncture, before filing of evidence by the Plaintiff, appointment of Court Commissioner was unwarranted. Plaintiff's Application is rightly rejected. Writ Petition, being devoid of merits, is dismissed without any orders as to costs.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

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NEETA SHAILESH
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