



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

6 WRIT PETITION NO. 4781 OF 2024

Umesh Arun Nandwad

....Petitioner

VERSUS

Gita Sunil Badgujar & others

.....Respondents

.....

Mr. A. J. Patil, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.

DATE : 24th JUNE, 2024.

PER COURT :

1. Heard.

2. Petitioner is Plaintiff who has filed suit against the Defendants alleging causing of encroachment to the extent of 14R land and seeking possession thereof. The stage of the proceedings is for hearing the application for interim relief under Order 39 Rules 1 and 2 of the Code of Civil Procedure. At this stage, Plaintiff filed application for appointment of Court Commissioner. The said application is opposed by the Defendants. Learned Trial Court rejected the application with observation that power prescribed under Order 26 Rule 9 of Code of Civil Procedure cannot be used for collecting evidence for any party. It is further observed that the merit

of the case will have to be considered on the facts and circumstances of the case. Thus, the learned Trial Court was of the view that appointment of Court Commissioner at this stage of the proceeding is not permissible.

3. Learned counsel for the Petitioner/Plaintiff submits that in order to enable the Plaintiff to prove that there is encroachment caused by the Defendants on his property, and to seek appropriate relief, appointment of Court Commissioner is necessary. To support his submission, he placed reliance on judgment of Orissa High Court in case of Amiyu Bhusan vs. Ahammad Ali, **1986 Legal Eagle 102**.

4. There cannot be any dispute made with regard to the proposition that the Court Commissioner cannot be appointed to collect evidence for and on behalf of the parties. At the stage of proceeding before the Trial Court, the parties will have to substantiate their case by relying upon the material available with them. Even if the application for appointment of Court Commissioner is allowed, it may not be possible for the learned Trial Court to consider the said report in absence of proof thereof. In such circumstances, the Trial Court is fully justified in not exercising the

powers under Order 26 Rule 9 of Code of Civil Procedure to appoint Court Commissioner at this stage. This Court finds no perversity in the said findings as a result of which, Petition stands dismissed.

(R. M. JOSHI)
Judge

dyb