



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

39 WRIT PETITION NO. 6932 OF 2024

**VISHNU BHANUDAS ANARSE
VERSUS
MANOJ SANCHALAL GUGLE**

.....
Advocate for the Petitioner : Mr. Jagtap Adinath B.
Advocate for the Respondent : Mr. Temkar Rajendra K.
.....

**CORAM : Y.G. KHOBRAGADE, J.
DATE : 18.09.2024**

PC.:-

1. Heard advocate Mr. Jagtap the learned counsel appearing for the Petitioner and Mr. Temkar the learned counsel appearing for the Respondent.
2. By the present petition the Petitioner is challenging the order dated 26.02.2024 passed below Exh.59 in RCS No.615/2018 by the learned C.J.J.D., Ashti (Exh.E), whereby declined to appoint the Court Commissioner under Order 26 Rule 9 of the C.P.C.
3. The learned counsel appearing for the Petitioner canvassed in vehemence that the Petitioner/Original Plaintiff filed RCS No.615/2018 and prayed for decree of injunction restraining the Defendant from interfering with his possession over the suit land. The Respondent/Defendant filed

written statement at Exh.31-B and denied the claim of the Petitioner/Plaintiff. The Petitioner/Plaintiff had filed Exh.59 and prayed for appointment of the Court Commissioner under Order 26 Rule 9 of the C.P.C. on the ground that on 26.03.2018 the Plaintiff purchased the suit land under sale-deed no.720/2008. Accordingly, his name was mutated in the revenue record vide mutation entry no.6181. The Plaintiff has given four-corners of boundaries which are as under:

Towards East : Kada to Devinimgaon Road

Towards West : Land of Waman Dhoble

Towards North : Land of Bajirao Jhinjurke

Towards south : Land of Tukaram Shinde

4. Therefore, in order to ascertain the land as well as four-corners of the boundary of the Petitioner's land, it is necessary to appoint a Court Commissioner. The Respondent/Defendant filed reply at Exh.62 and contended that the Petitioner/Plaintiff filed Suit along with Exh.5 and prayed for temporary injunction, however, on 19.09.2022 the said application for temporary injunction was rejected. Being aggrieved by the said order, the Petitioner/Plaintiff filed M.C.A. No.94/2022, however, on 15.04.2022 the said appeal came to be dismissed and order of rejection of temporary injunction was confirmed. Since the Plaintiff filed a Suit for injunction restraining the Defendant from interfering with his possession over the suit land, therefore,

there is no need for appointment of Court Commissioner. However, the Petitioner has filed an application Exh.59 with an intention to collect evidence in support of his case. Therefore, by impugned order dated 26.02.2024 the learned Trial Court rejected the application on the ground that the measurement cannot be used for collecting evidence of parties by appointing a Court Commissioner.

5. Needless to say that the claim of the Plaintiff/Petitioner is that he purchased the suit property in the year 2008 and since then he is in possession of the said land. He mutated his name in revenue record after execution of the sale-deed. However, on 15.07.2018 when he was present at the suit property at that time the Defendant visited and asked him what he is doing and then asked him to leave the suit land. It is not the case of the Plaintiff that the Defendant made encroachment on any portion of his land. The aims and object of Order 26 Rule 9 is that whenever there is a dispute about the encroachment on any portion of either side of the land in that event to ascertain the truth of the matter the Court Commissioner can be appointed under Order 26 Rule 9 of the C.P.C. for measurement of the disputed property by following the due procedure of law. In the case in hand, it is not the case of the Plaintiff that the Defendant encroached upon any portion of the Plaintiff's land, therefore, no question arise for appointment of the Court

Commissioner. The learned trial Court passed the impugned order and declined to appoint the Court Commissioner because the Plaintiff wanted to collect the evidence through the Court Commissioner, which does not appear perverse, illegal and bad in law.

6. In view of the above discussion, I do not find that the impugned judgment and order is illegal, bad in law and no interference is called at the hands of this Court. Therefore, the present petition is dismissed.

[Y.G. KHOBRADE, J.]