



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

998 WRIT PETITION NO. 8219 OF 2024

BHARAT BAPURAO GHANATE

VERSUS

ASHOK NARAYAN KOKKAR AND OTHERS

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Advocate for the Petitioner : Mr. Phatale Sagar S

Advocate for Respondents : Mr. Gangakhedkar Shailendra S.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 16<sup>th</sup> OCTOBER, 2024

PER COURT:

1. Heard.
2. The application filed by the petitioner for appointment of the court commissioner is rejected on the ground that this would amount to collection of evidence on behalf of the plaintiff.
3. The case of the petitioner is that respondents are seeking pathway through the field of the petitioner / plaintiff. He submits that there is no such road in existence and that in order to ascertain the existence of the road the appointment of the court commissioner is directed so as to verify the existence of the road and that panchanama can be carried out of the field and the existence of the road can be ascertained. The trial court specifically held that this will amount to

collection of evidence. The perusal of the issue shows that it is for the defendants to prove there is a road passing through the suit land the burden is cast upon the defendants. In the event, the defendants fail to discharge the burden the consequences will follow against the defendants. So also, Order 26 Rule 9 of the CPC the trial court can appoint the court commissioner to elucidate the matter. Order 26 Rule 9 provides that, in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

4. In the instant matter, the parties have laid evidence as regards the existence or the non existence of the road. It is only when the court finds that the local investigation is necessary that the court can order the local investigation.

5. In the instant case, the court held that the issues no.1 and 2 burden is on the plaintiff to prove that he is in possession of the suit property and the defendants have interfered with the possession over the suit property. As regards the issue no.3 is concerned, it is for the

defendants to establish that the road from which the defendants are seeking access is passing through the property of the plaintiff.

6. Since the burden is cast upon the defendants to prove existence of road, the application filed by the plaintiff for appointment of the Court Commissioner is not entertained. The civil court has not felt the necessity to elucidate the matter further in view of the evidence lead by the parties. Thus, I see no reason to interfere in the impugned order.

7. The writ petition stands disposed of.

**[ARUN R. PEDNEKER, J.]**

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