



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

WRIT PETITION NO. 10810 OF 2016

Latabai Parmeshwar Sangve
VERSUS
Sangitabai Balaji Snagve And Others

Mr. S. P. Dhobale, Advocate for petitioner
Mr. H. B. Nandagavale, Advocate for respondent.

CORAM : R. M. JOSHI, J.

DATE : 10th DECEMBER, 2024

PER COURT :-

1. This petition takes exception to the order dated 16.04.2016 passed below Exhibit 51 in R.C.S. No. 118/2010 whereby application filed by plaintiff/petitioner under Order XXVI Rule 9 of the Civil Procedure Code for appointment of Court Commissioner for local inspection /investigation came to be rejected.

2. The facts as they appear from the record indicate that suit is filed by the plaintiff for injunction and declaration with specific contention that in Gut No. 53, two wells are situated, one of the said well is newly constructed by him. The defendants in their written statement disputed the said contention about the existence of two wells. It is specifically claimed that only one well exists in Gut No.53.

3. Learned counsel for the petitioner submits that in the peculiar facts of the case, local inspection is must and Order XXVI Rule 9 of C.P.C. appears in the statute to meet such a situation.

4. Learned counsel for the respondent had relied upon judgment of coordinate bench of this Court ***Shantaram Dattatray Kekan and Ors. V. Bhausaheb Karbhari Kekan and Anr., AIROnline 2022 BOM 669.*** Perusal of the said judgment indicates that the same does not lay any proposition of law that in the similar circumstances as they exist in the present writ, no appointment of Court Commissioner can be done. In fact Paragraph 13 of the said judgment indicates that in the facts and circumstances of the case, the issue of appointment of Court Commissioner can be decided.

5. Reference can be made to Order XXVI Rule 9 of C.P.C. This provision indicates 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, such appointment can be made. There cannot be any better case than the one in hand.

6. In the facts of the case and owing to the claims of rival parties, the oral evidence led by the parties would only be word against

word. When there was dispute before the learned trial Court with regard to the existence of number of wells in the suit property, legal inspection of the said property becomes essential. Merely because application came to be filed after the evidence of plaintiff was over and that one witness was examined by the defendant, it cannot become a ground for rejection in the peculiar facts of the case in order to decide the dispute involved in the suit effectively. Thus, this is a fit case wherein the Court Commissioner is required to be appointed for local inspection.

7. In view of considering peculiarity of the facts of the case, impugned order cannot sustain. Hence, it stands set aside. Application Exhibit 51 filed in R.C.S. No. 118/2010 stands allowed.

8. Petition is allowed in above terms.

(R. M. JOSHI, J.)

bsj