



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO. 12344 OF 2024

PAWAN ANANDRAO BHOSALE
VERSUS
SUKHDEV SHANKAR DHAWALE AND ANOTHER

Mr. M. V. Salunke, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024

PER COURT :-

1. The petitioner is plaintiff in R.C.S. No. 1071/2018 and being aggrieved by rejection of application Exhibit 23 for appointment of Court Commissioner to measure the suit property has preferred this petition.
2. The petitioner has filed suit for declaration of ownership and permanent injunction in respect of the suit property admeasuring 185.77 Sq. meter out of Survey No. 35/1 situated at Village Osmanabad. In the plaint there is alternative prayer i.e. the plaintiff is not found to be in actual possession of the suit property would be put in the possession thereof. Plaintiff examined himself and was cross-examined by the defendant. On the basis of one answer given by the plaintiff during the cross-examination, an application came to be moved vide Exhibit 23 for seeking appointment of Court Commissioner to measure suit property. This application was opposed by the defendant respondent. Learned Trial Court rejected the application by holding that there is no pleading in the

plaint that the plaintiff has been dispossessed or an encroachment has been done by any person on the suit property.

3. Learned counsel for the petitioner submits that there is alternate plea raised by the plaintiff with regard to the possession and in view of the answer given by the plaintiff in during the cross-examination, now an issue has arisen with regard to the dimensions of the suit property. It is his contention that in any case no prejudice much less any irreparable loss would cause to the respondent defendant if the Court Commissioner is appointed. To support of his submission he placed reliance on the judgment of the Hon'ble Supreme Court in case of *Haryana Waqf Board Versus Shanti Sarup and Ors, 2008 AIR (SC) (Supp) 616*.

4. There cannot be any dispute made with regard to the position of law that in appropriate cases where the issue of demarcation, measurement of property, encroachment etc. is involved in the suit, it would be open for the parties after leading the evidence of their own, to get the Court Commissioner appointed to measure the properties. In so far as the present case concerned, *prima facie* perusal of the plaint as well as written statement does not show that there is any dispute with regard to the measurement/ dimensions of the suit properties. All that defendant has claimed in the written statement is that he is not the

neighbour of the plaintiff. Apart from this perusal of cross-examination of plaintiff and the admission given by him with regard to the house of defendant no.1 being situated on the suit property, does not remotely involves the issue of demarcation thereof.

5. As rightly observed by the learned Trial Court that there is no pleading in the plaint with regard to the dispossession of the plaintiff or encroachment being made by any person on the property of the plaintiff, question of appointment of Court Commissioner does not arise. In considered view of this Court, the judgment cited supra in case of ***Haryana Waqf Board*** (cited supra) pertained to the demarcation of suit land. Owing to the material difference in the facts of both cases, the said judgment would not come to the aid of the petitioner in any manner whatsoever. Having regard to the facts involved in this case, Court finds no perversity in the impugned order to cause interference therein. Hence, petition stands dismissed.

6. Needless to say that above observations are *prima facie* and for limited purpose of deciding this petition and that Trial Court is not bound by the same while deciding the suit on merit.

(R. M. JOSHI, J.)

ssp