

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15818 OF 2023

Nivrutti Raghunath Gujar

.. Petitioner

Versus

Tukaram Krushna Wagh and Ors.

.. Respondents

-
- Mr. Nikhil Wadikar i/by Nandu Pawar, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024.

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** Heard Mr. Wadikar, learned Advocate for the Petitioner / Plaintiff.
- 3.** This Writ Petition takes exception to the impugned order dated 09.08.2023 rejecting the Application filed by Plaintiff seeking appointment of Court Commissioner. Suit is filed in the year 2020 for injunction. At the stage of Exhibit “5” this particular Application below Exhibit “23” is made under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short “CPC”) for appointment of Court Commissioner. I have perused the impugned order dated 09.08.2023 which is at Exhibit “E” - page No.36 of the Writ Petition.

4. One of the principal reason for rejection of the Application is in view of the fact that the Suit property was already measured at an earlier point of time on 25.07.2007 and appropriate details of the Suit property was found in place in the Mojani Register against Registration No.9297/2007. The learned Trial Court held against the Petitioner / Plaintiff that this fact was suppressed by the Plaintiff and therefore considering it as an important issue rejected the Application.

5. Though it is argued by the learned Advocate for the Petitioner / Plaintiff that the earlier measurement was carried out in respect of property namely 1B only and property namely 1A was infact not considered at that point of time.

6. Be that as it may, the learned Trial Court used its desecration and has given cogent reasons that at a pre-trial stage the attempt of the Petitioner / Plaintiff would amount to collection of evidence.

7. Therefore, considering the nature and stage of the Suit, I do not find any reasons to interfere with the impugned order dated 09.08.2023.

8. However, Mr. Wadikar has been fair to the Court in his submissions considering the fact that the Suit is for injunction only. Hence, it is directed that after the evidence of the parties is completed, if the learned Trial Court finds any ambiguity in deciphering and delineating the Suit property, it shall be open to the learned Trial

Court to appoint a Court Commissioner either on its own discretion or if so requested by the parties concerned strictly in accordance with law. All questions and contentions of both parties are expressly kept open in all proceedings before the Trial Court.

9. At the request of Mr. Wadikar, it is further directed that the learned Trial Court is requested by this Court to dispose of the Suit proceeding as expeditiously as possible and preferably within a period of 18 months from today.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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