

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 15121 OF 2024

Mansing Babaso Nikam

.. Petitioner

Versus

Aanvarhusen Ainuddin Hervade Shaikh & Ors.

.. Respondents

-
- Mr. Sandeep S. Koregave for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 14, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 14.06.2024.
3. Heard Mr. Koregave, learned Advocate for Petitioner.
4. Impugned order dated 21.02.2024 rejects the Application filed by Defendants seeking appointment of the Court Commissioner in a Suit filed by Plaintiffs for removal of encroachment. Undoubtedly in such Suit proceedings, initial burden of proving the same is on the Plaintiffs to prove that the suit property belongs to the Plaintiffs and the Defendants have encroached upon the same. Once the Plaintiffs discharges the said burden, then it is the turn of the Defendants to show that the encroached property belongs to them and they are the owners of the same. Without discharging the said burden, Defendants have filed the Application for appointment of the Court Commissioner

which amounts to gathering of evidence. Undoubtedly it needs to be clarified that after the evidence both the parties is led and if Court still finds that there is an element of discretion for the Court to decide and adjudicate the issue, it shall be solely at the discretion of the learned Trial Court to consider the Application on behalf of the parties for appointment of the Court Commissioner or even *suo motu* on its own discretion, learned Trial Court shall still appoint the Court Commissioner in order to put an end to the *lis* between the parties.

5. In view of the above, impugned order is sustained.
6. All contentions of the parties are expressly kept open.
7. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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