



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 250 OF 2024

(Pramod S/o. Yadavrao Chilve ..VS.. The Collector, Gadchiroli & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. R.V. Kukday, Advocate for Petitioner.
Shri A.J. Gohokar, A.G.P. for Respondent Nos.1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 15, 2024.

1. The application Exhibit No.59 for appointment of Court Commissioner is rejected by the impugned order dated 31.10.2023 passed by the Civil Judge, Senior Division, Gadchiroli in Regular Civil Suit No.48/2018. The application was rejected on the ground that, defendants' case is that, plaintiff has encroached upon the suit land, as such, the burden lies on the defendants to prove the said fact and not on the plaintiff.

2. Even otherwise, after going through the application for appointment of Court Commissioner, it is evident that it is the case of the plaintiff that the suit land was allotted by the Government on Patta to one Abdul Habib Ahemad and after his death his legal heirs came in possession of the said land and from them the plaintiff obtained possession. As far as, revocation of Patta of the suit land is concerned, the learned Counsel for the petitioner states that the separate proceedings are going on.

3. Thus, if there is any case pleaded as regards encroachment of suit land by the plaintiff, it is pleaded by the defendants.

4. It is a settled law that the party who asserts any fact has to establish such fact. Admittedly, the prayer for appointment of Court Commissioner is not made by the defendants. Thus, in the above referred facts and circumstances, I do not find any error committed by the learned trial Court in rejecting the application for appointing the Court Commissioner. Hence, the writ petition is dismissed.

JUDGE