



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

WRIT PETITION NO.4214 OF 2023

Vilas Maniram Naitam .Vs. Arun Sukhdeo Piple and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.G. Karmarkar, Advocate for petitioner.

Shri Rohit Joshi, Advocate for respondent Nos.1 and 3 to 6.

Ms R.P. Gosavi, Adv. h/f Shri G.N. Khanzode, Adv. for respondent No.7.

CORAM : ANIL S. KILOR, J.

DATED : 15/01/2024

1. Heard.

2. The order below Exh.36 dated 11.05.2023 passed by the 2nd Jt. Civil Judge Junior Division, Gadchiroli, rejecting the application preferred by the petitioner/plaintiff under Order 26, Rule 9 of the Code of Civil Procedure for appointment of Deputy Superintendent of Land Record, Gadchiroli as a Court Commissioner for measurement of land survey No.31, is under challenge in this writ petition.

3. The petitioner is the plaintiff who filed a suit for removal of encroachment and for possession. In the suit, though he has mentioned that approximately 0.6 HR land has been encroached by the respondent Nos.1 to 6, no plaint map or any measurement is shown pointing out from which particular boundary of the suit land the encroachment was made. No sufficient details are given and

therefore, the learned trial Court while rejecting the application has observed thus:

“23. But the plaintiffs have not satisfied about how many lands has been encroached by defendants with clear description till then this Court is not inclined to grant this application and therefore, the ruling with due respect are on different footing. Whereas the application of plaintiffs is on different footing. In other word it can say that, plaintiffs wanted to gather evidence through Court. Similarly, on which side and on which land the defendants have made encroachment is not clarified in the plaint as well as in the application. Only it is saying that 0.6 H.R. has been encroached by defendants but from which side it has been encroached by the defendants is not made clear by the plaintiffs. Whether that land has been encroached by the defendants is one of the parts of the land purchased by them is also not clarified by the defendants.”

4. The learned trial Court has therefore, rightly held that, at this stage, the appointment of Court Commissioner will be for collection of evidence before the Court and the same cannot be an object behind the appointment of Court Commissioner. As the learned trial Court has rightly considered the prayer of the petitioner and rejected the same for the reasons recorded in the order which are not perverse or suffers from legal infirmity.

5. In the circumstances, as there is no merit in the writ petition, the writ petition is **dismissed**.

JUDGE