



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

Writ Petition (WP) No. 4076 of 2024

Jayashree Wd/o Vijayrao Saraf and another

Versus

Shrish S/o Parshuram Dabali and another

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

Court's or Judge's Order

Shri K.J.Topale, Advocate for the petitioners.

Shri S.U.Nemade, Advocate for the respondents.

CORAM : N.R.BORKAR, J.

DATED : 14th AUGUST, 2024.

This petition takes exception to the order dated 19th June, 2024 passed by the learned Joint Civil Judge, Senior Division, Wardha below Exhibit 21 in Special Civil Suit No. 61 of 2024.

2. By the order impugned the learned trial Court has rejected the application filed by the petitioners/plaintiffs under Order XVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner.

3. The dispute between the parties is in relation to the survey No. 73/1 at village Chopan, Taluka Karanja, District Wardha.

4. The learned counsel for the petitioners submits that the original survey number 73 was never partitioned by metes and bounds. It is submitted that the petitioners are in possession of the entire land bearing survey No. 73. It is submitted that to bring the said position on record the application was moved for appointment of Court Commissioner. It is submitted that Court Commissioner's report would assist the Court in proper adjudication of the matter.

5. On the other hand, the learned counsel for the respondents submits that the mother of respondent no.1 was the owner of survey No.73. After her death it devolved upon respondent no.1 and his sister. It is submitted that in the year 2009 partition took place between respondent no.1 and his sister. It is submitted that Survey No. 73/1 was allotted to the share of respondent no.1 and survey no. 73/2 was allotted to the share of his sister. It is submitted that respondent no.2 is the bonafide purchaser of survey no.73/2. The learned counsel for the respondents submits that considering the overall facts and circumstances the learned trial Court has rightly rejected the application.

6. Considering the nature of dispute between the parties, the learned trial Court has rightly rejected

the application. No interference is therefore called for in the impugned order. The writ petition is dismissed.

[N.R.BORKAR, J.]