



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

WRIT PETITION NO. 7534 OF 2023

Dipak Marotrao Jorgalwar,
Aged about 45 years,
Occupation : Business,
R/o Ashti, Taluka Chamorshi,
District Gadchiroli

PETITIONER

VERSUS

- 1 Diwakar Suresh Khutemate,
Aged about 45 years,
Occupation : Business
- 2 Mandabai Suresh Khutemate,
Aged about 70 years, Occupation : Nil
Both R/o Ashti, Taluka Chamorshi,
District : Gadchiroli

RESPONDENTS

Mr. Rohan Deo, Advocate for petitioner
Mr. S.G. Karmarkar, Advocate for Respondents

CORAM : BHARAT P. DESHPANDE, J.

DATE : 14th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard with consent for final disposal.

2. The short issue involved in the present proceedings is the order passed by the learned trial Court under Order XXVI Rule 9 of the Code of Civil Procedure (CPC), thereby rejecting the application of the plaintiff for inspection of the shop by the Court Commissioner.

3. The learned counsel for the petitioner would submit that the suit under Section 6 of the Specific Relief Act is filed for restoration of possession of the suit shop, which was forcibly taken by the respondents / defendants. During pendency of the proceedings the application is filed by the plaintiff for appointment of Court Commissioner to inspect the suit shop and to submit the report. Such application was objected by the defendants. After hearing the arguments, the learned trial Court rejected this application on two fold grounds. The first ground is that the appointment of the Court Commissioner would be collecting evidence for the plaintiff and secondly that since the issues are not framed the application is premature.

4. First of all, the provisions of Order XXVI Rule 9 of the CPC nowhere restricts the powers of the Court for appointment of the Court Commissioner for local investigation. It says that in any suit in which the Court deems local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of the property, or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it

thinks fit directing him to make such investigation and to report thereon to the Court. Rule 10 deals with the procedure of Commission as well as the report. Similarly, it deals with the power of the Commissioner to examine any person.

5. The observations of the learned trial Court that the application filed for appointment of Court Commissioner as premature is incorrect and against the provisions. There is no provision that such application could be entertained only after framing of the issues. In fact the purpose of issuance of the Court Commissioner is to assist the Court in evaluating the contentions raised by the parties to decide it effectively.

6. The plaintiff in this matter filed an application for appointment of Court Commissioner on the specific ground that he was forcibly dispossessed from the suit shop and that his belongings are still lying in the suit shop. The purpose of the Court Commissioner in such circumstances would be to inspect the suit shop and to find out what exists therein and whether such articles belongs to the plaintiff or to the defendants. If this aspect is considered by doing so, would not at all amounts to collecting evidence by the Court. The inspection as provided

under Rule 9 of the Act is very clear, wherein it is provided about local investigation. This would require investigation includes the inspection of the premises and to find out what exists therein and to whom it belongs.

7. The contention of the defendants in this matter is that the plaintiff voluntarily handed over possession of the suit shop. The real controversy in the suit is only revolving upon the allegations made by the plaintiff so as to consider the contention that such dispossession was forcible.

8. Accordingly, the impugned order needs interference as it is against the settled proposition of law.

9. Having said so, the impugned order is quashed and set aside. The application for appointment of Court Commissioner stands allowed.

10. The petition is allowed in the above terms. No costs.

11. Rule is made absolute in the above terms.

(BHARAT P. DESHPANDE, J.)