



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO. 10721 OF 2022

Minabai Sahebrao Karad
Through Her Power of Attorney Holder
Sahebrao Pundlik KaradPetitioner

VERSUS

Vishwanath Pundlikrao KaradRespondent

.....

Mr. H. I. Pathan, Advocate for the Petitioner.
Mr. S.B. Madde, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.
DATE : 20th JANUARY, 2025.

PER COURT :

1. This Petition takes exception to the order dated 22.02.2022 passed below Exhibit 39 in Regular Civil Suit No. 480/2018 allowing the application filed by Plaintiff for appointment of TILR, Ahmedpur as Court Commissioner for measurement of the suit property.

2. There is no dispute about the fact that the suit is filed by Plaintiff for declaration, injunction and also for removal of encroachment.

3. There cannot be any dispute with regard to the fact that at appropriate stage, it is open for the parties to seek appointment of Court Commissioner for local inspection. In this regard reference can be made to Order 26 Rule 9 of Code of Civil Procedure which reads thus :-

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any 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: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

4. This provision indicates that in any suit in which the Court deems a local investigation to be requisite for the purpose of elucidating any matter in dispute, such Court Commissioner may be appointed. This provision clearly indicates that what is contemplated herein is elucidating any matter and not for collection of evidence on behalf of the parties. Needless to say that the parties are required to lead evidence in support of their case and only in case of any

inspection is required, appointment of Court Commissioner can be made.

5. Having regard to the fact that application Exhibit 39 is filed even before framing of issues, this Court finds that the impugned order is not sustainable in the eyes of law. Hence, Petition is allowed. Impugned order is set aside.

6. Needless to state that at appropriate stage, it is open for the parties to make application for appointment of Court Commissioner. If any such application is made, the same be decided in accordance with law.

(R. M. JOSHI)
Judge

dyb