



the possession and enjoyment of the plaintiff over eight plots measuring 5400 sq.ft. out of Gat No. 515/2/1 situated at Gopalnagar, Mauje Kumbhari, District-Solapur (the suit plots). The plaintiff claims to have purchased the said plots under an agreement and possession receipt as layout was not sanctioned and there was prohibition on sale of Gunthewari plots. The plaintiff claimed to have made development over the suit plot to run a hotel. The defendant caused obstruction to the possession and enjoyment of the plaintiff and threatened to dismantle the structure erected on the suit plot. Hence the suit.

3. In the counter-claim the respondent no.2 contended that the plaintiff had, in fact, caused obstruction to the possession and enjoyment of the respondent-defendant no. 2 over the plots which admeasure 2100 sq.ft, situated at Vijaynagar. The plaintiff had erected wire fencing and construction upto plinth level on the plots which belong to defendant no. 2. Hence, the counter-claim for declaration and injunction.

4. By an order dated 8<sup>th</sup> October 2024, the Trial Court restrained the defendant no. 2 from causing obstruction to the possession and enjoyment of the plaintiff over the suit plots situated at Gopalnagar and rejected the application for temporary injunction preferred by the defendant no.2.

5. The defendant no. 2 filed an application for appointment of the Court Commissioner as there was a dispute about the exact location of the suit plots and alleged encroachment committed by the one party over the plots of the other. The learned Civil Judge was of the view

that, the appointment of the Court Commissioner will elucidate the matter in controversy.

6. Mr. Tajane, learned counsel for the petitioner, submitted that the entire exercise is driven by a design to collect evidence. Since, the plots of the plaintiff and the defendant no.2 are shown to be located in different areas and separated by a road, there was no justification for appointment of the Court Commissioner. If the plots of the plaintiff and defendant no. 2 are not located adjacent to each other no question of demarcation of the boundaries arises, submitted Mr. Tajane.

7. It is imperative to note that, in the case at hand, both the plaintiff and defendant no. 2 claim to have purchased the plots from the land for which layout has not been sanctioned and NA permission is yet to be obtained. The parties claim to have purchased the plots under unregistered instruments on account of the prohibition on transfer of Gunthewari plots.

8. It is, in this context, the disputes have arisen between the parties over the situs of the land which the respective parties have allegedly acquired. The plaintiff claims that he has erected the structures on the suit plots. Whereas, defendant no.2 contends that, in fact, the plaintiff, by taking the law in his own hand, has erected the fencing and structure on the plots which belong to defendant no. 2. This being the nature of the controversy between the parties, the learned Civil Judge was justified in appointing the Deputy Superintendent of Land Records as a Court Commissioner to inspect the suit plots as well as the disputed plots and ascertain the location thereof, have measurement and submit a report.

9. The report of the Court Commissioner, in such a situation, would elucidate the matter in controversy and assist the Court in arriving at a just decision of the case. Thus, no interference is warranted in exercise of writ jurisdiction.

10. The petition stands dismissed.

(N.J. JAMADAR, J)