



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**SECOND APPEAL NO.193 OF 2020**

**[Sheshrao Waman Shelke ..Vs.. Dinkar Mahadu Dukre]**

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*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders.*

*Court's or Judge's order*

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Mr A. Sambre, Advocate for Appellant.

Mr R. G. Kavimandan, Advocate for Respondent.

**CORAM : M. W. CHANDWANI, J.**

**DATE : 26<sup>th</sup> JUNE, 2025.**

1. Heard.

2. By this appeal, the appellant challenges the judgment and order dated 01.11.2019 passed in Regular Civil Appeal No.93 of 2014, whereby the appeal filed by the appellant against the dismissal of the suit by the Civil Judge Junior Division, Chikhli came to be dismissed confirming the judgment and decree dated 19.06.2014 passed in Regular Civil Suit No.72 of 2009 by the Civil Judge Junior Division, Chikhli.

3. The appellant being a neighbour of the respondent filed a suit for permanent injunction seeking a restraining order against the respondent to prevent him from carrying out construction on the suit property. The respondent purchased the suit property having area 2 R. from the brother of the appellant and started construction of a house which was objected and consequently, the above suit came to be filed. The Trial Court after hearing both the sides dismissed the suit on the ground that no declaration was sought by the appellant that the sale-deed was in contravention of the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to

as, “the MPFCH Act, 1947”). An unsuccessful attempt was made before the learned Principal District Judge, Buldhana. Feeling aggrieved with the findings of both the Courts below, this appeal came to be filed.

4. The appellant’s application for appointment of a Court Commissioner to ascertain whether the respondent was carrying out construction and for measurement of the suit property came to be rejected by the Trial Court and the Appellate Court endorsed the findings of the Trial Court with regard to the rejection of the application. This Court by order dated 24.02.2021 framed the following substantial question of law :

*“Whether the learned courts below were justified in not considering the application filed by the Appellant/Plaintiff for appointment of court commissioner?”*

5. Heard both the parties. The law regarding the appointment of Court Commissioner is settled by this Court as well as all other High Courts. It is a settled position that the Court can appoint a Court Commissioner to ascertain the actual and factual aspects of the disputed property. At the same time, it is also settled law that a Court Commissioner cannot be appointed under Order 26 Rule 1 and 2 to collect evidence for a party. It is clear from the application of the appellant filed before the Trial Court that he wanted to collect the evidence to show that the respondent has started construction which was rejected by the Trial Court holding that this is an attempt to collect evidence. In my view, the Trial Court rightly rejected the application in view of the aforesaid legal position and it was rightly confirmed by the First Appellate Court. In wake of the settled position of law, the Court Commissioner cannot be appointed to collect evidence and hence, I find no

substance in the argument of the learned counsel for the appellant. Consequently, no substantial question of law arises in this appeal.

6. It is worthwhile to mention here that apart from the suit, other proceedings were also filed before the appropriate Authority under the provisions of the MPFCH Act, 1947 wherein, the appropriate Authority declared that the sale-deed of the respondent is in breach of the provisions of the MPFCH Act, 1947 and held that it is illegal. The proceedings were upheld up to this Court in Writ Petition No.630 of 2019 and the said order came to be confirmed by this Court by dismissing the writ petition filed by the respondent. However, this will not help the appellant in this appeal. In view of the above, the appeal stands dismissed.

**JUDGE**

Tambe.