



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

Writ Petition No.132/2025

Pradeep V Ghanshyam

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

Court's or Judge's orders

Mr. P.S. Tembhare, Advocate for petitioner.

Mr. P.A. Kadu, Advocate for respondent/Caveator.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 22-07-2025.

Heard Mr. P.S. Tembhare, learned Advocate for the petitioner and Mr. Parag Kadu, learned Advocate for the respondent.

2. The petitioner has challenged the order dated 12-07-2024 passed by the Civil Judge, Senior Division, Daryapur on application at Exhibit-15 for appointment of Court Commissioner in Regular Civil Suit No.29/2024.

3. Mr. Tembhare, learned Advocate for the petitioner submits that the petitioner is original plaintiff who had filed suit for injunction simplicitor against the sole defendant. He submits that during the pendency of the civil suit, the plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, seeking appointment of Court Commissioner. The petitioner's basic case before the learned trial Court was that the

plaintiff is in possession of the suit property i.e. Plot No.9, although the same was purchased by the plaintiff and defendant jointly. It is the case of the plaintiff that since 1997 the plaintiff is having possession of the entire suit property and he has even constructed five rooms on the said plot. However, after apprehending threat to his possession, he had filed civil suit seeking permanent injunction. He submits that since the defendant had disputed the fact of possession of the plaintiff, an application for appointment of Court Commissioner was filed so as to get the factual position clarified. The defendant opposed this application by its reply dated 14-06-2024. He submits that the learned trial Court has failed to consider the fact that the Commissioner was required to be appointed in view of the dispute raised by the defendant by his written statement. He submits that learned trial Court has erroneously observed that the Commissioner cannot be appointed for the purpose of ascertaining possession since it will not amount to collection of evidence.

4. Mr. Kadu, learned Advocate for the respondent strongly opposes the petition. He submits that there is no

perversity in the impugned order since the learned trial Court has properly observed that the plaintiff has sought appointment of Court Commissioner for the purpose of ascertaining the possession of the parties. He submits that the Commissioner cannot be appointed for this purpose since this will amount to collection of evidence. He further submits that the application for appointment of Court Commissioner is an attempt to collect evidence and therefore by considering the legal position the trial Court has rightly passed the impugned order.

5. Having considered the rival submissions it becomes clear that the plaintiff's suit is for permanent injunction only. Application for appointment of Court Commissioner at Exhibit-15 contains a specific prayer that the plaintiff wants the appointment of Court Commissioner to ascertain as to who is in possession. Application for appointment of Court Commissioner does not demonstrate any reasons as to why the Commissioner need to be appointed for deciding the actual controversy involved in the suit which is only for seeking permanent injunction. A perusal of the impugned order shows that the learned trial Court has taken into consideration the pleadings of the parties and in

view of the application seeking appointment of Court Commissioner for ascertaining the possession, learned trial Court has concluded that the appointment of Court Commissioner in this case would amount to only enabling the plaintiff to ascertain the possession. Although, learned Advocate for the petitioner has relied upon the judgment in the matter of *Kalyan Santram Kawade and others vs Khanderao alias Khandu Ganpati Kawade and others*, reported in *2015(4) Mh.L.J. 429*, the same is not applicable in the facts of the instant case.

6. Having regard to the contentions advanced, I am of the considered opinion that the appointment of Court Commissioner sought by the plaintiff is an attempt to collect evidence. The very prayer in the application filed by the plaintiff at Exhibit-15 also clearly shows that the plaintiff wants to ascertain as to who is in possession through the Court Commissioner. As such, this is not a fit case in which the Commissioner need to be appointed and the impugned order does not need any interference on any count.

7. Writ Petition is therefore dismissed. No order as to costs.

(Prafulla S. Khubalkar, J.)