

1.

R.C.S.No.225/2015

Pandurang Lakshman Ugale

Vs.

Madav Tukaram Ugale & Ors

ORDER BELOW EXH.32

(Passed on 30/11/2022)

This is an application made by defendant for appointment of Court Commissioner.

2. It is contended that, the present suit is filed for perpetual injunction against defendants. Defendant has filed his written statement and denied the contentions of the plaintiff. It is contended that, defendant is the owner of Gat no. 741 and 742 situated at Bargaon pimpri. Due to jungle road, the said property has been divided into two parts. It is further contended that, to clear the misunderstanding between the properties of plaintiff and defendants i.e. Gat no. 759.760, 741, 742, 743 it is necessary to appoint Court Commissioner so that the litigation between the parties will come to an end. Considering the nature of the suit, appointment of Court Commissioner is necessary for fixing of boundaries Gat no. 759.760, 741, 742, 743 situated at bargaon pimpri. It will help the Court to decide the case in true sense. Therefore, he prayed for appointment of T.I.L.R., Sinnar as Court Commissioner.

3. The application is strongly opposed by plaintiff overleaf. It is submitted that, the application is not maintainable. It is contended that, Gat no. 759 and 760 is self acquired and ancestral property of defendant. Defendant no. 1 is trying to collect evidence by seeking appointment of Court Commissioner. If application is allowed, plaintiff will suffer irreparable loss. Thus, the application for the appointment of

Court Commissioner cannot be allowed. Hence, prayed to reject the application.

4. Heard learned advocate for the plaintiff and learned advocate for the defendant no. 1. They have reiterated the contentions of their application and say.

5. Perused the application, say and record. The suit is for perpetual injunction. Plaintiff have filed the suit for restraining defendants from obstructing the suit property. Defendants have filed their written statement at exhibit 28 and denied the contentions of the plaint. It is pertinent to note that, in a suit for bare injunction filed by plaintiff, the necessity for appointment of Commissioner that too for noting down the physical features of the suit property does not arise and such exercise is not going to help the defendant in any manner in deciding the suit for bare injunction. It is well settled law that, no Court Commissioner can be appointed for collecting evidence as it is legally unsustainable. It is the duty of the parties to prove their case by leading oral and documentary evidence. The suit is being one for bare injunction, therefore, Court commissioner cannot be appointed to find out the factum of possession. Therefore, the application is liable to be rejected. Hence, I pass the following order:

ORDER

Application is rejected.

Date: 30/11/2022

(K.S. Khandre)

2nd Jt. C.J.J.D, Sinnar.