

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1246 OF 2014

Ishwarappa s/o Mahalingappa Dongre,
deceased, through his L.Rs. -

Ashok s/o Ishwarappa Dongre,
Age : 63 years, Occu. Agri.,
R/o Tapneshwar Road,
Jamkhed, Tq. Jamkhed,
Dist. Ahmednagar

..PETITIONER
(Orig. Plaintiff)

VERSUS

1. Dashrath s/o Vishwanath Salunke,
Age : 54 years, Occu. S.T. Driver

2. Ganesh s/o Dashrath Salunke,
Age : 34 years, Occu. Business,

All R/o Opp. New S.T. Stand,
Jamkhed, Tq. Jamkhed,
Dist. Ahmednagar

3. Mahadev s/o Shankar Gavhanem
Age : 49 years, Occu. Business,
R/o C/o Gavhane Electrical,
Nagar Road,
Dist. Ahmednagar

..RESPONDENTS
(Original Defendants)

Mr Niteen V. Gaware, Advocate for petitioner;
Mr M.S. Bhosale, Advocate for respondents no.1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 12th January, 2015

ORAL ORDER

By the present writ petition, the petitioner/original plaintiff, challenges the order dated 3rd January, 2014, passed by Joint Civil Judge Junior Division, Jamkhed, below Exh.195, in Regular Civil Suit No.69 of 2003.

2. The petitioner herein has instituted the above referred suit seeking relief of perpetual and mandatory injunction against the respondents/original defendants. In the said suit, the petitioner preferred application Exh.195 seeking appointment of Court Commissioner and it was prayed that a Lawyer be appointed as Court Commissioner. The petitioner has urged that the requirement of appointment of Court Commissioner is very much necessary so as to find out, whether there exists a way/road between the properties of the petitioner and respondents. According to him, an application preferred under Order XVI, Rule 9 of the Code of Civil Procedure is required to be allowed when there exists a dispute as regards encroachment.

3. In support of his contentions, Mr Gaware, learned Counsel appearing on behalf of the petitioner has placed reliance on the judgment of the Apex Court in the matter of **Haryana Waqf Board vs. Shanti Sarup & ors.**, reported in **2008 (8) SCC 671** and the judgment of this Court in the

matter of **Habibkhan Inauttalakhan & ors. vs. Waman Govind Rathod & ors.**, reported in **2012 (6) Bom. C.R. 379**.

4. Perusal of the impugned order discloses that earlier the petitioner/plaintiff had filed application Exh.180, seeking appointment of Taluka Inspector of Land Records as Court Commissioner, which was rejected by the Trial Court by order dated 1st August 2013, as the suit property was not subjected to city survey. The second default on the part of the petitioner was in not examining the Gramsevak, who was summoned as a witness on behalf of the petitioner and he has filed a purshis Exh.197 that he does not want to examine the said witness. After the above two events, the petitioner has filed application Exh.195 seeking appointment of a Lawyer as a Court Commissioner, which came to be rejected by the impugned order.

5. Perusal of the impugned order further discloses that the learned Trial Court has given cogent reasons in support of rejection of application Exh.195. The facts of the present case as are narrated and reflected in the impugned order and the facts involved in the reported decisions (cited supra) are altogether different.

6. In the light of what has been stated above, no illegality is noticed in the impugned order. Thus, the writ petition fails and same stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj