

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8152 OF 2014

BABASAHEB NARAYAN WALEKAR AND OTHERS
VERSUS
BHAGWAN MAROTI WALEKAR AND OTHERS

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Advocate for petitioners : Mr. RAKHUNDE PRAVIN B.
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CORAM : V. K. JADHAV, J.

DATED : 18th FEBRUARY, 2015

PER COURT :-

1. Heard Shri P. B. Rakhunde, the learned counsel for the petitioners.
2. The petitioners are the original plaintiffs, instituted Regular Civil Suit No. 6/2004 praying for partition and separate possession of their 1/3rd share in the suit property with metes and bounds. The petitioners have filed an application at Exh. 107 for appointment of Court Commissioner. The said application came to be rejected by the Court below and therefore the petitioners have filed this Writ Petition.
3. It appears that the petitioners/original plaintiffs insisted the Trial Court to appoint the Court Commissioner for inspection of the suit property and to file a report on the points that, whether the suit

property is divided in shares? If yes, then in how many shares and what are the crops taken in each share of the suit property? It also appears that during the pendency of the suit, the petitioners/original plaintiffs and the defendant Nos. 1, 3 and 5 had arrived at a compromise and they have admitted the plaintiffs' 1/3rd share in the suit property. The plaintiffs' evidence is completed way back in the year 2009 and now the suit is posted for the evidence of the defendants. The petitioners/original plaintiffs can very well cross examine the witnesses of the defendants and thus gets the opportunity of bring all above facts on record. Otherwise, by appointing the Court Commissioner, the petitioners/original plaintiffs are collecting the evidence in support of their case which is not permissible. Moreover, the suit is very old and by appointing the Court Commissioner at this stage, the trial of the suit will be prolonged unnecessarily.

4. The learned Judge of the Trial Court has rightly rejected the application at Exh. 107. No interference is called for. The order impugned is proper, correct and legal. The Writ Petition is devoid of any merit and the same is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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