

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10241 OF 2015

Vithhal S/o Kashinath Mundlik,
Age: 77 years, Occu: Agriculturist
and Business, R/o. Vedantnagar,
Savedi Road, Ahmednagar
Through Power of Attorney Holder
Shri. Prakash S/o Vithhal Mundlik,
Age: 56 years, Occu: Agri. & Business,
R/o Vedant Nagar, Savedi Road,
Ahmednagar

...Petitioner

versus

Kashinath S/o Nana Bhise,
Age: 69 years, Occu: Agri.
R/o Jakhangaon, Tq. Nagar,
District Ahmednagar & ors.

...Respondents

.....
Mr. N. C. Gaurd, Advocate for petitioners
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CORAM : N.W. SAMBRE, J.

DATE : 26th NOVEMBER, 2015

ORAL ORDER :

In Regular Civil Suit No. 222 of 2011 pending on the file of 11th Joint Civil Judge, Junior Division, Ahmednagar for perpetual injunction and fixation of boundaries, the petitioner/plaintiff moved an application for appointment of Court Commissioner under Order 26 Rule 9 of Code of Civil Procedure, which came to be rejected on 13/04/2015, as such, present petition.

2. Mr. Garud, learned Counsel for the petitioner by placing reliance upon the provisions of Order 26 Rule 9 of Code of Civil Procedure and upon the judgment of this Court in the matter of **Yeshwant Bhaduji Ghuse Vs. Vithobaji Laxman Ladekar** reported in **[2010(3) Mh. L.J.]** would urge that in the light of prayer in the plaint for grant of perpetual injunction and fixation of boundaries, prayer for appointment of Court Commissioner should have been granted.

3. Having perused the plaint that is placed on record by the petitioner/plaintiff, it is noted that the petitioner has made specific prayer for appointment of Court Commissioner, so as to demarcate the boundaries, drawing map to that effect.

4. The said prayer can be considered by the executing Court in case, if the suit of the plaintiff is decreed to the extent of prayer clause A and B. Apart from above, the same prayer cannot be granted at this stage being final prayer in the suit. It is worth to mention here that, the judgment relied upon by the learned Counsel for the petitioner in the matter of **Yeshwant** (supra) deals with the appointment of Court Commissioner wherein the claim of removal of encroachment is made in the suit. In the present case, the claim in

the suit is of simplicitor injunction, as such, law laid down by this Court in the matter **Yeshwant** (supra), is of hardly any applicability to the present case.

5. In view of above observations and in view of the fact that there is no merits in the writ petition, same is dismissed.

[**N.W. SAMBRE, J.**]