

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

WRIT PETITION NO. 8399 OF 2012

KUNDALIK JAGANNATH BHAND AND ANR
VERSUS
RAJENDRA TANHAJI MORE AND ANR

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Advocate for Petitioners : Mr. V.S. Badakh
Advocate for Respondents : Mr. K.B. Autade

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**CORAM : V.K. JADHAV, J.
Dated: September 22, 2015**

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PER COURT :-

1. Heard.

2. The petitioners are the original defendants. The respondents/original plaintiffs filed a R.C.S. No.38/2010 for relief of perpetual injunction. The petitioners have also filed their counter claim claiming same relief of perpetual injunction. During the pendency of the suit, the petitioners/original defendants have filed an application under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of the Court Commissioner for local inspection of the suit site. The learned 2nd Jt. Civil Judge J.D. Shrirampur by its order dated 20.6.2012 passed below Exh.26 rejected the said application. Hence, this writ petition.

3. The learned counsel for the petitioners submit that, the respondents/plaintiffs have no right of approach way through the plot owned by the petitioners/defendants. The learned counsel further submits that, the respondents/original plaintiffs have a different approach way and they are making attempt to encroach over the property owned and possessed by the petitioners/defendants. The learned counsel thus submits that, this controversy can only be resolved by appointing a Court Commissioner for inspection of the suit site.

4. The learned counsel for the respondents submits that the Trial Court has rightly rejected the said application at Exh.26. Writ Petition is devoid of any merit and thus liable to be dismissed.

5. It appears from the pleadings and the submissions of the counsel for the respective parties that the dispute is in respect of the approach way. Certain documentary evidence like the sale deed executed in favour of the respondent/original plaintiff clearly indicates the existing way towards the plot of the respondent/plaintiff.

6. In view of this, I am of the opinion that the learned Judge of the Trial Court has rightly observed that by filing such an application the petitioner/defendants are trying to collect the evidence, same is not permissible. The learned Judge of the Trial Court has rightly rejected the application at Exh.26. No interference is called for in the impugned order. Writ Petition is devoid of any merit. Writ Petition is hereby dismissed. In the circumstances there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-