

WRIT PETITION NO. 10404 OF 2015

versus

Mr. P.R. Katneshwarkar, Advocate for Petitioners

Order :-

1. Heard learned counsel for petitioners.
2. Learned Judge in paragraph No. 4 of the impugned order dated 18-09-2015 on Exhibit-21 in Regular civil Suit No. 22 of 2011, has given reasons as to why application of defendants for appointment of court commissioner cannot be considered. Paragraph No. 4 reads thus:

“ 4. I have carefully considered the rival contentions of both the parties to the suit. The suit is filed for permanent injunction by plaintiff against defendants with prayer that defendants shall not use common boundary either by using bullock-cart or by walking over it. Thus, the fact of common boundary is not in dispute. The alleged fact of existence of road by the defendant cannot be a ground for appointment of Court Commissioner. Evidence cannot be collected to infer that whether there is road in existence on common boundary. Defendant can prove such alleged fact of existence of road by producing relevant city survey record or other revenue record or by the contents of the sale deed in connection with

boundaries to his field. But, ofcourse, Commissioner cannot be appoint to infer whether there is road in existence or not. Collection of evidence cannot be permitted by using mode of appointment of Commissioner.

As held by Their Lordship in the case of Sanjay Khandare Vs. Sahebrao Khandare, reported in Mh.L.J. 2001(2) 959, as follows:

“ This revision application takes exception to the order passed by the Civil Juge, Junior Division, Mahagan, dated July, 24, 1998 directing appointment of Court Commissioner. On going through the said order, it would appear that Court has appointed Court Commissioner empowering him to visit and inspect the spot being suit field and to submit report regarding actual possession of the suit field. This would tantamount to appointing Court Commissioner for collecting evidence regarding possession. It is well settled law that the Court Commissioner cannot be appointed for collecting Evidence.”

Therefore, the application is devoid of merit and has no substance.”

3. Having regard to the same, I am not inclined to entertain this writ petition.

4. Writ petition, as such, stands rejected. It is open for the petitioners for other grievance to take up appropriate proceedings.

Sd/-

(SUNIL P. DESHMUKH, J.)