

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 10495 OF 2015

Raghunath s/o Vithhalrao Wadikar and anr. .. Petitioners
versus
Govind s/o Tulshiram Choudhari and ors. .. Respondents

Mr. B. R. Waramaa, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.
21ST OCTOBER, 2015

ORDER:

1. Heard learned counsel for the petitioners
2. It is being contended that having regard to peculiar nature of land in three pieces being involved, physical local inspection is necessitated even if it is a suit for simplicitor injunction and there is a grave threat of dismantling of boundary marks at the hands of defendants.
3. It is the contention of the petitioners that when the defendants denied the very existence of land, it would be incumbent to have the commissioner appointed for spot inspection.
4. Learned judge while passing impugned order dated 11-09-2015 under which application Exhibit-25 moved by the

petitioners for appointment of commissioner has been rejected, has elaborately discussed reasons in paragraph number 4 of the order which read :-

“ 4. Heard both sides. Perused record. Perusal of record shows that, the present suit is filed by the plaintiffs for seeking relief of simplicitor injunction by contending their possession over the suit property and obstruction at the hands of defendants. It is needless to mention that, in a suit for simplicitor injunction, a very limited issue as regards possession and obstruction is required to be dealt with. In the present matter, the plaintiffs have specifically come with the case that, they are holding lawful possession of the suit property and their such possession is obstructed by the defendants. In such circumstances, it is their obligation to prove their possession over the suit property and obstruction to their such possession at the hands of defendants. In order to decide these issues, there is absolutely no necessity to get measured the suit property and therefore, the appointment of T.I.L.R. or anybody else as a Court Commissioner for measurement of suit property is absolutely unwarranted. Here, though the learned advocate of plaintiff tried to rely on the decision of the Hon'ble Bombay High Court in Writ Petition No.7094 of 2013 decided on 17-10-2013 in the case of Malhar Bokephod & anr. V. Shivaji Pawal, the law laid down in this case is based on totally distinct set of facts. Therefore, this case law is not applicable here. In view of all

above discussion, the application being devoid of any merits stands rejected. "

5. Having regard to aforesaid reasons which have gone to making of impugned order which cannot be said to be strayed or perverse, I am not inclined to entertain writ petition.

6. Writ petition, as such, is rejected.

7. At this stage, learned counsel for the petitioners submits that petitioners may privately carry out measurement. If so advised and if it is possible, petitioners may make efforts accordingly.

SUNIL P. DESHMUKH, J.

pnd