

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

Writ Petition No. 6334 of 2016

- 1) Farid Khan s/o Chamu Khan,
Age 65 years,
Occupation : Agriculture.
- 2) Afsar Khan s/o Abdul Khan,
Age 40 years,
Occupation : Agriculture.
- 3) Alimar Khan s/o Bane Khan,
Age 50 years,
Occupation : Agriculture.
- 4) Riyaz Khan s/o Fareed Khan,
Age 40 years,
Occupation : Agriculture.
- 5) Taher Khan s/o Wahed Khan,
Age 35 years,
Occupation : Agriculture.

All R/o Deolali Chowk,
Beed-by-pass, Aurangabad. .. **Petitioners.**

Versus

- * Majid Khan s/o Rahim Khan,
Age 60 years,
Occupation : Agri. & Business,
R/o Deolali Chowk,
Beed-by-pass, Aurangabad. .. **Respondent.**

Shri. Y.B. Pathan, Advocate, for petitioners.

Shri. Punit Mehta, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 22 NOVEMBER 2016

ORAL JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed to challenge the order made by the learned 3rd Joint Civil Judge, Junior Division, Aurangabad, on Exhibit 20 in Regular Civil Suit No.575/2015. The suit is filed for injunction simplicitor by present respondent. He has prayed for injunction to prevent the defendants from making encroachment or causing disturbance in the possession of the plaintiff over the suit property Gat No. 131 from Northern and Western sides. Thus, the suit is filed for injunction to protect the possession.

3) In the application filed for appointment of Court Commissioner the plaintiff has prayed for following relief.

“To appoint T.I.L.R. as Court Commissioner for measurement of entire Gat No.131 along with the northern and western boundaries with reference to the boundaries of Gat Nos. 124/2 and 139 thereby to demarcate the boundaries and to report the same along with the map, demarcating the boundaries particularly the northern and western boundary or limit of Gat No.131 at Satara, Taluka and District Aurangabad.”

4) If the prayer made in the application filed for appointment of Court Commissioner is compared with the relief claimed in the suit it can be said that the appointment of Court Commissioner has no connection at all with the relief of injunction claimed in the suit. Learned counsel for the respondent placed reliance on a case reported as **2015(1) Bom.C.R. 267 (Dattatray Namdev Kalake v. Bapu Bhairu)** and submitted that such relief can be granted in the suit for injunction. Facts of the reported case were totally different. Then he placed reliance on a case reported as **(2009) 12 SCC 773 (ECE Industries Ltd. (I) v. S.P. Real Estate Developers (P) Ltd.)** In this case the facts were different and the nature of the suit was different. In view of the facts of the present case

and the relief claimed by the plaintiff of aforesaid nature, this Court holds that appointment of Court Commissioner was not at all necessary. It is true that suit for demarcation of boundaries and fixing boundary marks is tenable but that kind of suit is not filed. Thus, this Court holds that the trial Court has committed grave error in making order of appointment of Court Commissioner.

5) In the result, the petition is allowed. The order made by the trial Court on application Exhibit 20 of appointment of Court Commissioner is hereby quashed and set aside. Rule made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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