

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

932 WRIT PETITION NO. 2595 OF 2015

RAM MANAJI NEHARKAR
VERSUS
SRIPATI MANAJI NEHARKAR AND OTHERS

...
Advocate for Petitioner : A.N. Nagargoje
AGP for Respondents 1 to 3 : M.S. Karad h/f. S.S. Thombre
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CORAM : T.V. NALAWADE, J.
DATED : 22nd December, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Kaij on Exh. 38 in R.C.S. No. 95/2011. Both the sides are heard.

2. It appears that in injunction suit filed by the present petitioner initially order of appointment of T.I.L.R. was made and direction was given by the Court to T.I.L.R. to fix the boundaries and boundary marks of the suit land. There was some disturbance at the time of preparation of panchanama and preparing boundaries and boundary marks and so, the Court Commissioner could not complete the work. He gave the report accordingly. The aforesaid application came to be filed by the plaintiff and he requested to issue order again to D.I.L.R., Court Commissioner to do the needful. The Trial Court has held that in

injunction suit, such Commissioner cannot be appointed by observing that the problem cannot be solved in such a suit by remeasuring the lands and fixing the boundaries. In view of the aforesaid circumstances, the order of appointment of Court Commissioner at the first instance was not possible. When the suit is filed for injunction, such Court Commissioner could not have been appointed. When the suit is filed for demarcating the boundaries, then only such order of the Court Commissioner can be made. Plaintiff may make amendment in the plaint and move the Trial Court accordingly. With these observations, the petition is disposed of.

[T.V. NALAWADE, J.]

ssc/