

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

WRIT PETITION NO. 4800 OF 2016

Sakharam s/o Namdev Kakade ... Petitioner

Versus

Jagannath s/o Natha Abhang and another ... Respondents

.....
Mr. Yuvraj V. Kakde, Advocate for petitioner
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 12th JULY, 2016

ORDER :

1. Heard learned counsel for the petitioner.
2. Petitioner-original plaintiff purports to have been aggrieved by order dated 01-02-2016 on Exhibit-39 in Regular Civil Suit No. 115 of 2014 passed by the Civil Judge, Junior Division, Shevgaon, whereunder the request of plaintiff to appoint court commissioner to visit suit property in respect of access suggested by plaintiff and to prepare map and to make report, has been declined.

3. Learned counsel for the petitioner states that in earlier litigation, there is recognition to existence of access to the suit way and the earlier litigation had culminated into a settlement decree. He submits that having regard to aforesaid, while the defendant-respondent in present petition has been denying the existence of access, it would be pertinent to appoint court commissioner.

4. Perusal of impugned order shows that learned judge of the trial court has considered that it is the primary responsibility of the plaintiff to discharge the burden on the relevant issues, and it has been further observed that at present the application tantamounts to collection of evidence in respect of the subject matter of the suit. The trial court, thus, had been disinclined to give any indulgence to the request and rejected the application.

5. Having regard to the reasons as are occurring in paragraph No.8 of impugned order, those do not appear at this stage to suffer an infirmity and may not be said to be not adhering to facts pleaded and as such, at this stage, no interference is called for in the same, in the writ petition. However, if, upon evidence, the circumstances warrant and

the situation arises, such appointment as has been requested under application Exhibit-39 is necessitated, plaintiff may make application afresh, to be decided by the court with reference to the facts, circumstances and law.

6. Writ petition, as such, stands rejected.

(SUNIL P. DESHMUKH, J.)

sms