

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

WRIT PETITION NO. 5647 OF 2016

Sayyd Jafar s/o Sayyd Nazir and another .. Petitioners

vs

Rajendra s/o Chaganlal Kayast .. Respondent

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th June, 2016

ORDER :

1. Heard learned counsel for petitioners.
2. Petitioners-original defendants are before this court, purporting to impugn order dated 18-06-2015 upon Exhibit - 26 in regular civil suit no. 122 of 2012 instituted by present respondent for injunction in respect of the property referred to in the plaint.
3. Learned counsel submits that that there is one more litigation pending and the position emerges that the boundaries which have been referred to in the plaint have become disputed.

4. In the circumstances, petitioners had moved an application Exhibit - 26 for appointment of court commissioner and the trial court has passed following order:

" This is an application filed for measurement as dimensions are disputed. However, plaintiff is yet to commence his evidence. Considering the nature of dispute, I do not find necessary to appoint C. C. Hence, application is rejected. "

5. Learned counsel further fairly refers to that evidence in the suit is yet to commence.

6. Having regard to aforesaid, since evidence has yet not commenced, the application appears to be pre-mature. The order impugned as such does not require to be meddled with at this juncture. If, upon evidence, petitioners feel it appropriate to move application for the very purpose, they may make an attempt accordingly and the same shall be decided by the court in accordance with facts, circumstances and law.

7. Writ petition as such, with aforesaid, stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd