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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6183/2016

Bhausahab Bhivaji Tribhuvan.

...Petitioner..

Versus

Ashok Anant Tribhuvan.

...Respondent...

.....

Shri B.A. Husale, Advocate for petitioner.

Shri N.B. Narwade, Advocate for respondent.

.....

CORAM: T.V. NALAWADE, J.

DATE: 14.09.2016

ORDER :

1] The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Rahata, Dist.Ahmednagar, on application filed at Exhibit 13 in Regular Civil Suit No.79/2013.

2] Both the sides are heard.

3] The suit is filed by present petitioner for relief of partition and other reliefs of agricultural land. The present respondent Ashok has filed written statement and he has even denied the relationship with the petitioner.

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He has filed counter claim in the suit by contending that present petitioner is illegally in possession of the portion owned by Ashok and he is encroacher on that portion. The submissions made show that in the past, Ashok himself had filed suit for partition in which the relationship with the present petitioner was admitted.

4] There is a grievance to the present petitioner that while allowing the application for appointment of Court Commissioner, the Court has made observation that the alleged encroachment made by the present petitioner needs to be ascertained by making measurement through D.I.L.R. These observations are only for the purpose of appointment of Court Commissioner and they are on the basis of only the contentions made by Ashok. It cannot be said that the Court has made observations and has given a finding that the present petitioner is an encroacher.

5] On the basis of the rival pleadings, there will be issues framed and necessarily the Court will consider the so called admission given by Ashok in the previous suit. Thus, the apprehension of the present petitioner / plaintiff of the present suit is misconceived. It can be

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said that there was no necessity for Ashok for filing the application for appointment of Court Commissioner as he is also interested in getting the relief of possession. In view of aforesaid circumstances, this Court holds that there is no need to interfere in the order made by the trial Court.

6] In the result, the petition stands dismissed. All the points are kept open.

(T.V. NALAWADE, J.)