

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

WRIT PETITION NO. 9575 OF 2015

Shyamkumar s/o Sambh Malwatkar and another .. Petitioners

vs

Vimalbai w/o Tulshiram Honraj

.. Respondent

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Mrs. M. V. Narwade, Advocate h/f Mr. P.R. Katneshwarkar,
Advocate for petitioners

Mr. V. S. Kadam, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th June, 2016

ORDER :

1. Heard learned counsel for parties.
2. This is defendants' writ petition filed against order of rejection of their application Exhibit-39 seeking appointment of court commissioner in regular civil suit no. 182 of 2013 filed by present respondent simplicitor for injunction.
3. It appears to be the case of petitioners that it is the plaintiff who has caused encroachment over the land of defendants and in the circumstances since there is encroachment it would be appropriate to appoint court commissioner.
4. Learned counsel for petitioner in support of her submissions refers to and relies on couple of judgments, namely, *Ramzan Sheikh*

Chand Sheikh vs Panjab s/o Nathuji Gawande, reported in 2014 (6) *Mh.L.J.* 95, and *Mohd. Hashim Ajmullah Khan vs. Vasiullah Nsibullah Khan*, reported in 2014 (3) *Mh.L. J.* 451.

5. However, looking at that the application has been moved before the issues have been framed and further that evidence is yet to be led, application appears to be pre-mature at this stage and as such there is no reason to meddle with the order impugned in the present writ petition. It would however, be open for petitioners to make an attempt afresh if upon evidence it appears that such an appointment of court commissioner is called for.

6. With aforesaid, writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd