

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

7 WRIT PETITION NO. 10705 OF 2016

AJINATH DHONDIRAM BHALEKAR AND ANOTHER
VERSUS
MANAJI GANPAT BHALEKAR

Shri. Rahul R. Karpe, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 19 in Regular Civil Suit No.345/2015 which is pending in the Court of the Civil Judge Junior Division, Rahuri. Heard learned counsel for the petitioners.

2) The suit is filed by the respondent for relief of injunction and mandatory injunction. In the plaint, the plaintiff has given hand sketch map of his land and the construction and he has contended that the defendants have no concern what so ever with the suit property but

they are trying to make construction and by that way they have made some construction illegally on the property of the plaintiff. Prayer is made in the suit by the plaintiff to remove that construction.

3) The defendants have contended that the property on which their house is there, belongs to them as the property has come to their share in family partition and they have been living there for more than 25 to 30 years. Thus, the defendants have taken stand that the defendants are owner of the said portion.

4) By appointing Court Commissioner the defendants want to collect evidence with regard to the nature of the construction standing there and also the age of the trees. When the suit is filed for relief of mandatory injunction, of aforesaid nature and the defendants have taken stand that they are owners of the property where the house is standing, Court Commissioner's report cannot help in any way to both the sides. If the plaintiff fails to prove that he has title the plaintiff will fail to get the decree. Nature of construction etc. will not affect the

fate of the suit in view of the defence taken by the defendants. This Court holds that nothing can be achieved by appointing Court Commissioner. Thus, the trial Court has not committed any error in rejecting the application filed for appointment of Court Commissioner. The petition stands dismissed

Sd/-
(T.V. NALAWADE, J.)

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