

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

Writ Petition No.10850 of 2015

- 1) Baba s/o. Sakharam Muley,
Age 38 years,
Occupation : Agriculture.
R/o Near Lakdoba Maruti Temple,
Jawla Bazzar, Taluka Aundha (N),
District Hingoli.
- 2) Sitaram s/o. Sakharam Muley,
Age 46 years,
Occupation : Agriculture.
R/o Near Lakdoba Maruti Temple,
Jawla Bazzar, Taluka Aundha (N),
District Hingoli. **.. Petitioners.**

Versus

- * Sanjay s/o. Motilal Parihar,
Age 44 years
Occupation : Service,
Jawla Bazzar, Taluka Aundha (N),
District Hingoli. **.. Respondent.**

Shri. S.B. Parnere, Advocate, holding for Shri. V.P. Kadam,
Advocate, for petitioners.

Shri. Sudhir K. Chavan, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 30 SEPTEMBER 2016.

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed to challenge the order made on Exhibit 30 of Regular Civil Suit No.2/2014 by the learned Civil Judge, Junior Division, Aundha Nagnath. Said application was filed by the plaintiff for appointment of Taluka Inspector of Land Record as a Court Commissioner. Direction is given by the trial Court to the Taluka Inspector of Land Record (T.I.L.R.) to take measurement in the presence of both the sides and give report to the Court. The dispute with regard to the boundaries raised by the defendants is mentioned in the order but there is no specific direction given to the T.I.L.R. in respect of the said dispute.

3) When the suit is filed for relief of injunction, plaintiff is expected to prove the possession, the cause of action and that balance of convenience lies in his favour. Nothing else is required to be considered by the Court. It

is upto the plaintiff to prove his case on the aforesaid three points. The T.I.L.R. cannot collect the evidence for plaintiff and the T.I.L.R. cannot fix boundaries in a suit filed for relief of perpetual injunction. If the suit was filed for relief of possession after making contention that defendants have made encroachment, things would have been different. If the suit was filed for giving direction to the concerned authority to make measurement and fix boundaries, things would have been different. In the suit like the present one the Court is not expected to appoint Court Commissioner much-less the T.I.L.R. and the evidence of the T.I.L.R. cannot be used for any purpose in a suit for injunction. Independently the plaintiff is entitled to prove the cause of action and his possession over the property. In view of the nature of relief claimed in the suit, this Court holds that the trial Court has committed serious error in making appointment of the Court Commissioner. So, the following order.

4) The petition is allowed. The order made on Exhibit 30 is hereby quashed and set aside. The said application filed for appointment of Court Commissioner is

rejected. Liberty is there to apply to the trial Court if proper relief is claimed in the suit. If there is previous record prepared by the T.I.L.R. and if that record is produced, the trial Court may use that record. The observations are made only for the purpose of considering the appointment of the Court Commissioner. Rule is made absolute in the above terms.

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

rsl