

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11494 OF 2016

Bharat Jamsing Pawar
Age 65 years, Occu. Agriculture,
R/o. Bahirpur, Taluka Shahada,
District Nandurbar.

....Petitioner.

Versus

1. Vishwas Anna Khedkar,
Age 35 years, Occu. Agriculture,
2. Dinesh Anna Khedkar,
Age 43 years, Occu. Agriculture,
3. Ganesh Anil Khedkar,
Age 34 years, Occu. Agriculture,
4. Indas Gomda Khedkar,
Age 40 years, Occu. Agriculture,
5. Babulal Balji Khedkar,
Age 50 years, Occu. Agriculture,
6. Arjun Madhukar Chavan,
Age 25 years, Occu. Agriculture,
7. Karansing Vijay Pawar,
Age 40 years, Occu. Agriculture,
8. Rama Shankar Pawar,
Age 42 years, Occu. Agriculture

....Respondents.

Mr. A.S. Salve, Advocate for petitioner.

Mr. D.M. Pingale, Advocate for respondent Nos. 1 to 8.

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The proceeding is filed to challenge the order made on Exh. 39 filed in R.C.S. No. 43/2016 which is pending in the Court of Civil Judge, Senior Division, Shahada, District Nandurbar. Present respondents, defendants had filed application for appointment of T.I.L.R. as Court Commissioner. The Trial Court has ordered to T.I.L.R. to work as Court Commissioner and to prepare and give report of existing position of east side of Gat No. 1 and to say something about distance between Gat No. 1 and existing road.

3. The learned counsel for petitioner submitted that suit is for relief of injunction simplicitor and it is up to the plaintiff to prove that he is in possession of the suit property and there is illegal obstruction from these defendants. He submitted that the appointment of Court Commissioner in such a suit is unwarranted and by appointing Court Commissioner no evidence can be collected in injunction suit. There is force in this submission. The burden will be always on plaintiff to make out his case for getting relief of permanent injunction. The relief of

temporary injunction is already granted in faovur of plaintiff. But, he will have to show on merits that he is in possession and there is obstruction to his possession which is illegal from the side of defendants. The report of Court Commissioner cannot help defendants in any way if they are not having any concern with the suit property. This Court holds that it was unnecessary to appoint the Court Commissioner and much less the T.I.L.R.

4) In the result, the petition is allowed. The order made by the Trial Court on Exh. 39 in R.C.S. No. 43/2016 is hereby set aside. The application filed for appointment of Court Commissioner is rejected.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/