

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

15 WRIT PETITION NO. 11910 OF 2016

**TULSHIRAM BHAGWAN ANDHALE AND ANOTHER
VERSUS
SATYABHAMABAI ARJUN LATE AND ANOTHER**

Shri. Rajendrraa Deshmukkh, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by learned Joint Civil Judge Senior Division Beed on Exhibit 68 in Regular Civil Suit No.446/2012. Heard learned counsel for the petitioners.

2) The suit is filed by the present petitioners for relief of perpetual injunction and they have prayed for the relief in respect of some portion of land Gat No.180. The defendants are purchasers of some portion of the same Gat number and it is the case of the plaintiffs that the defendants are obstructing their possession over the portion belonging to them. In the suit, the defendants

have filed written statement and counter claim and they have contended that the plaintiffs themselves have made encroachment over their portion, the portion of 59 R. It appears that the defendants have got measured their land and they have noticed that the plaintiffs have made encroachment over their portion. In view of this circumstance, the plaintiffs now want appointment of Court Commissioner when their suit is only for relief of perpetual injunction.

3) The plaintiffs have requested to issue direction to Court Commissioner after making his appointment to do following things :-

(i) To ascertain as to whether there is common *bandh* in existence in between the portion of the plaintiff and the portion of the defendants.

(ii) To measure the length and width of the common *bandh*.

(iii) To make report as to on which side of this *bandh* there is portion of the plaintiff and there is portion of the defendants.

(iv) To make report as to whether on western side of the land of the defendants there is *bandh*.

4) If the nature of relief claimed by the plaintiffs is kept in mind it can be said that the aforesaid things are not at all required for deciding the suit filed for relief of simplicitor injunction. It can be said that plaintiffs are trying to collect evidence which also may not be relevant for counter claim. If the plaintiffs have grievance in respect of the measurement taken through Taluka Inspector of Land Records at the instance of the defendants, that is other matter and there are appropriate remedies in that regard. In view of nature of relief claimed by the petitioners in such a suit this Court holds that Court Commissioner for doing aforesaid things could not have been appointed and the trial Court has rightly rejected the application. There is no need to issue notice to the other side. The petition stands dismissed.

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

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