

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

910 WRIT PETITION NO. 12009 OF 2016

VITHAL PUNJA DANGE AND OTHERS
VERSUS
DAGADU CHANGDEO PAWAR AND ANOTHER

...
Advocate for Petitioners : V.C. Patil h/f. Vikhe Patil Prabhakar B.

...
CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 40 in R.C.S. No. 442/2013. Heard the learned counsel for petitioners.

2. The suit is filed by one Dagdu Pawar for fixing boundaries and boundary marks of his land Gat Nos. 168 and 169. He has also prayed for relief of injunction. Present petitioners are defendant Nos. 7 to 12 in the said proceeding. It appears that Court Commissioner was already appointed at the instance of plaintiff and Court Commissioner has submitted the report. The Court Commissioner has given report and he has shown in the map that present petitioners have made some encroachment over the suit property.

3. The present petitioners apprehend that by using the map prepared by the Court Commissioner, the defendants will

be prevented from using the portion which is in their possession. They apprehend that the relief of injunction will be given by the Court on the basis of report of Court Commissioner. This apprehension is misconceived. When the suit is filed for injunction simplicitor, it is necessary for the Court to ascertain as to whether plaintiff is in possession of the property in respect of which injunction is sought. If the defendants have made some encroachment, it will be necessary for plaintiff to amend the suit and make the suit for possession also of encroached portion.

4. If the defendants have grievance in respect of the measurement made by the Court Commissioner, they have other way like opting for measurement through superior officer as provided in Maharashtra Land Revenue Code. However, that provision cannot be used by Civil Court as the Court Commissioner does the work as per the order made by the Court and the Court is not expected to appoint superior officer to make the measurement only because there is grievance in respect of measurement of one party. In view of these circumstances, this Court holds that the application itself was misconceived. In the result, the petition is dismissed with the aforesaid observations.

[T.V. NALAWADE, J.]

SSC/