

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

WRIT PETITION NO. 11738 OF 2015

GANESH GOVINDRAO DESHMUKH AND OTHERS.
VERSUS
SONABAI DIGAMBER PATIL AND OTHERS.

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Advocate for Petitioners : Mr M D Narwadkar
Advocate for Respondents 1-3 : Mr U B Bilolikar
AGP for Respondent No.4 : Mr. S.N.Kendre

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CORAM : V.K. JADHAV, J.

Dated: January 14, 2016

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PER COURT :-

1. By consent of learned counsel for respective parties,
heard finally, at admission stage.

2. By way of this Writ Petition, the petitioners/original
defendants are challenging the order dated 21.11.2015 passed
below Exh.27 in RCS No.116/2015 by the Civil Judge, S.D.
Mukhed, thereby allowing the application filed by the
respondents/plaintiffs for appointment of the Court
Commissioner.

3. Learned counsel for the petitioners/original defendants
submits that, even though application at Exh.5 for issuance
of the order of temporary injunction is pending,
respondents/original plaintiffs have filed an application for

appointment of the Court Commissioner and the same is allowed by the Trial Court. Learned counsel further submits that, respondents/plaintiffs have instituted a suit for decree of perpetual injunction only and therefore, appointment of the Court Commissioner to measure the suit land is unwarranted and uncalled for.

4. Learned counsel for the respondents/original plaintiffs submits that there are two maps already submitted before the trial Court. Respondents/plaintiffs have filed one map whereas the petitioners/original defendants have submitted another map before the Trial Court. Both the maps are contrary to each other. Thus, in view of the proper adjudication of the matter in dispute, the respondents/plaintiffs has filed an application to appoint T.I.L.R. as Court Commissioner for local investigation and measurement of the land S.No.15/6, 15/7, 15/8 owned and possessed by the respondents/original plaintiffs and land S.No.24 owned and possessed by the petitioners/original defendants and also the alluvial land. Learned counsel has further pointed out that, the trial court, in its impugned order has made it clear that the Court Commissioner is not appointed for ascertaining the possession of the parties.

5. It appears that, the maps already produced on record are contrary to each other. Learned counsel for the petitioners/original defendants has strongly resisted the application only on the ground that the Temporary injunction application is yet to be disposed of. It appears from the impugned order that, the Trial Court has directed the measurement of the lands owned and possessed by both the parties and alluvial lands for proper adjudication of the matter in dispute. It also appears from the impugned order that the Trial Court has made it clear that the Court Commissioner is not appointed for ascertaining the possession of the parties. Thus, the apprehension expressed by the petitioners/original defendants that if the Court Commissioner is appointed prior to disposal of application Exh.5, that would affect the decision on application Exh.5, is ill-founded.

6. Learned counsel for respondents/plaintiffs, at this stage, submits that even the Commission is executed yesterday and the report and the map is likely to be submitted before the Court within a short period.

7. In view of the above discussion, there is no substance in the writ petition. Writ Petition is liable to be dismissed.

8. Writ Petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-