

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

WRIT PETITION NO. 5387 OF 2016

Ashok Limbaji Shinde

..PETITIONER

VERSUS

Vishnu Murlidhar Shinde and Others

..RESPONDENTS

....
Mr. P.K. Deshmukh, Advocate for petitioner.

....

**CORAM : T.V. NALAWADE, J.
DATED : 17th OCTOBER, 2016**

ORDER :

1. The petition is filed to challenge the order made on Exhibit 44 in Regular Civil Suit No. 499 of 2013 presently pending in the Court of Civil Judge, Senior Division, Osmanabad. Heard learned Counsel for petitioner.

2. The suit is filed by the present petitioner for relief of injunction in respect of agricultural land. Application for interim relief was given but it appears that it was refused. In application filed for appointment of Court Commissioner, the petitioner/plaintiff has contended that during pendency of the suit and when the interim relief was refused, defendants

destroyed the boundary marks and that way they are trying to make encroachment over the property. Though application for interim relief is refused, the suit still remains for relief of injunction and no amendment is made in the suit to get appropriate relief. Learned Counsel for petitioner placed reliance on a case reported as **(2008) 8 SCC 671 (Haryana Waqf Board Vs. Shanti Sarup and Others)** and submitted that when there is necessity of demarcation of boundaries of the suit land, the Court Commissioner needs to be appointed. There is no dispute over this proposition but no such relief is claimed. Though at present the Trial Court has refused the relief of appointment of Court Commissioner, it will be open to the plaintiff to make such application again if he makes amendment in the plaint to claim appropriate relief in view of change of circumstances.

3. With the aforesaid circumstances, petition is disposed of.

(T.V. NALAWADE, J.)

SSD