

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***WRIT PETITION NO. 4860 OF 2010
Along with
CIVIL APPLICATION NO. 1730 OF 2016
(For bringing legal heirs on record)***

Shri Vilas Dinkar Patil & anr. .. Applicants / Petitioners
Vs.
Shri Dattu Babu Patil & ors. .. Respondents

Mr.Harshad Shingnapurkar i/b Amit Borkar, for Applicants /
Petitioners.

Ms.A.J.Patil i/b Mr.Prashant Bhavake, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Friday, 7 October 2016.***

P.C. :

The order under challenge in the Petition is passed by the learned Civil Judge, Senior Division, Kolhapur, on 25 March 2010 rejecting the application filed by Petitioners-Plaintiff for appointment of Court Commissioner.

2. The suit is filed for injunction and removal of encroachment. The learned Civil Judge has held that for collection of evidence the appointment of Commissioner is not warranted. The learned

counsel for Applicants -Petitioners has sought to place relevant various decisions of this Court which has laid down that it is desirable and in some cases necessary to appoint Commissioner to carry out measurements especially when the dispute involved is a boundary dispute. These series of decisions have not been adverted to by the learned Civil Judge in the impugned order. The learned counsel for Petitioners states that liberty be given to Petitioners to make one more application for appointment of Commissioner relying on the decisions which are now rendered by this Court which has settled the position of law. The request so made is reasonable. The Petitioners are allowed to withdraw the Writ Petition with liberty to file a fresh application for appointment of Court Commissioner in light of the law laid by this Court stressing the need to appoint Court Commissioner in boundary dispute. On such application is made, it will be decided on its own merits. The learned Civil Judge, will decide the application uninfluenced by the impugned order. Writ Petition is disposed of as withdrawn with liberty as above. Civil Application does not survive and stands disposed of.

(N.M.Jamdar, J.)