

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

WRIT PETITION NO. 4871 OF 2017

NILKANTH GOROBA ROHI
VERSUS
VITTHAL RANGNATH GADADE AND ANOTHER

...
Advocate for Petitioner : Shri Naser S. Shah h/f Shri Natu Sharad V.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th September, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 10.08.2016 passed by the Trial Court by which the application Exhibit-83 filed by the Petitioner/ Plaintiff has been rejected and the request for appointing the Court Commissioner, is turned down.

2 The Petitioner submits that the Respondents are encroaching on the properties/ suit land which is in possession of the Petitioner. He has instituted the suit for seeking a perpetual injunction against the Defendants because they are interfering in the peaceful possession of the Plaintiff. As there is an encroachment from the south side of the suit land, the appointment of the court commissioner is necessary for the joint measurement of the lands of the litigating sides.

3 The Petitioner relies upon the judgment of this Court in the

matter of Malhar Ganpat Bokephod and others vs. Shivaji Vishwanath Pawal, 2014(1) Bom.C.R. 806, wherein it is concluded that in the cases of boundary disputes, encroachment and disputes with regard to the identity of lands, the court commissioner can be appointed.

4 Considering the submissions of the Petitioner, I called upon the learned Advocate to point out whether, the Plaintiff has pleaded of any encroachment on a particular area from a particular side of the suit land. The learned Advocate has gone through the entire plaint and submits that paragraphs 4 and 5 would indicate that the Respondents are encroaching on the suit land.

5 Upon considering the submissions, I have gone through paragraphs 4 and 5 of the plaint. There are no pleadings as regards any encroachment by the Defendants, save and except, the contention set out at several places in the plaint that the Defendants are threatening the Plaintiff and are disturbing his lawful possession.

6 These aspects can be considered while deciding the suit. In the event of a boundary dispute or encroachment on such portion of the land which is disputed on account of the boundary dispute, the Court Commissioner could have been appointed. When the suit for seeking a perpetual injunction on the basis of possession and when there is no grievance as regards encroachment, much less any boundary dispute, I do not find that the Trial Court has committed any error in rejecting the

application Exhibit-83.

7 This Writ Petition being devoid of merit is, therefore,
dismissed.

kps

(RAVINDRA V. GHUGE, J.)