

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

WRIT PETITION NO. 2118 OF 2015

Sardar Surjitsingh s/o Jeevansingh Girniwale
age 56 years, occ. Agril
r/o Gurudwara Gate no. 3
Kankkya Compound
Nanded

.. PETITIONER

VERSUS

Sow. Karuna w/o Ishwarrao Jondhale
age 45 years, occ. Agril & household
r/o Shivajinagar, Nanded

.. RESPONDENT

Mr. A.A. Mukhedkar, advocate for petitioner.
Mr. A.H. Kasliwal, advocate for respondent.

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CORAM : S. B. SHUKRE, J.

DATE : 24th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. Order dated 12th January, 2015, rejecting application vide exh. 86, seeking appointment of Court Commissioner for demarcation of the boundaries is under challenge in the present writ petition.
4. The learned Civil Judge has rejected the application vide Exh. 86 mainly on the ground that the relief claimed by defendant in the counter claim was of passing of decree for demarcation of boundaries by appointing

Court Commissioner and, therefore, similar relief cannot be granted at an interlocutory stage. Other ground of rejection of application is that similar application exh. 50 seeking appointment of Court Commissioner for demarcation of boundaries was earlier rejected.

5. The view taken by the learned Civil Judge is consistent with the settled principles of law. I do not see any patent illegality in the same and, therefore, this is not a fit case for making any interference in the impugned order.

6. Learned counsel for petitioner, in support of his contention that the impugned order is erroneous, has invited my attention to the view taken by the learned Single Judge in the case of Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade **2011(3) Bom.C.R. 807**. There is no doubt about the principle of law laid down in this case that whenever the Court finds that Court Commissioner would assist in arriving at just decision, the Court Commissioner must be appointed and, this is when, there is a dispute about demarcation of land and the suit is for declaration and possession of property. In the instant case, neither of the parties have claimed any relief for recovery of possession. There is also no contention made by any of the parties that there is encroachment over their respective properties. Therefore, I am of the view that case of Kolhapuri Bandu Lakade (supra) would be of no assistance to the learned counsel for petitioner. The facts of the cases Habibkhan Inauttalakhan & others Vs. Waman Govind Rathod & others 2012(6) Bom.C.R. 379, Dattatray Namdev Kalake Vs. Bapu Bhairu

Bhivungade & others 2015(1) Bom.C.R. 267 and, Laxman Waman Nagpure Vs. Shankar Haribhau Adhau & another 2014(6) Bom.C.R. 195 also show that the issue of encroachment was involved in those suits and, therefore, it was found necessary that the Court Commissioner for demarcation was appointed. Such are not the facts of the instant case and, therefore, even these cases would be of no assistance to the learned counsel for petitioner.

7. In the result, writ petition is dismissed with costs. Rule made absolute accordingly.

(S. B. SHUKRE)
JUDGE

dyb