

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO.4278 OF 2017

KESHAV BASWANT JADHAV

VERSUS

SHRISHAIYALA BASWANT JADHAV AND OTHERS

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Advocate for Petitioner : Mr. Kadam Annasaheb S.

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CORAM : P.R.BORA, J.

DATE : 3rd April, 2017.

PER COURT :

1) Heard learned Counsel for petitioner. The order passed below Exh.42 in Regular Civil Suit No.90/2014 by 2nd Joint Civil Judge, Junior Division, Ausa on 27th February, 2017, is challenged in the present petition.

2) The application at Exh.42 was filed by the present petitioner seeking appointment of T.I.L.R. under Order 26 of the Code of Civil Procedure. The learned Trial Court in para 5 of the impugned order has observed as under, -

5. Admittedly, the suit is for simplicitor injunction. There is no dispute in respect of boundaries. Furthermore, there is no such contention of plaintiff that defendants trying to encroach over the suit property. As per contention of plaintiff, the parties are in peaceful possession as per terms of compromise. The plaintiff has relied 2008 Supreme Court Cases. 671 Hariyana Wakhfa Board vs. Shanti Saru, MH.L.J.2011(3) Kolhapuri Bandu Lakade vs. Yellappa Chinappa Lakade, All M.R. 2012 (1) Habibkhan vs. Waman and 2014 (6) All M.R. 696 Devrao vs. Janardhan. In the cited decisions the question of encroachment was involved. Furthermore, the facts of the cited case and the present matter in my hand are totally indifferent. In the present matter there is no dispute of the boundaries or no question of encroachment is also involved. Hence, the present rulings filed by plaintiff are not helpful to him.

3) Looking to the observations made by the learned Trial Court, as above, it does not appear to me that any interference is warranted in the impugned order. The writ petition being devoid of any substance, stands rejected.

(P.R.BORA,J.)

bdv/