

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

16 WRIT PETITION NO. 14438 OF 2017

MALLIKARJUN CHANNAPPA SHETE AND OTHERS
VERSUS
KALYAN SHIVRAJ BULBULE

...

Advocate for Petitioners : Mrs. Anjali Dube (Bajpai).

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CORAM : **V. K. JADHAV, J.**

DATE : 18th December, 2017.

ORDER:

. I find no substance in this writ petition. The Petitioners / original Defendants have filed an application Exhibit 37 for appointment of Court Commissioner. The Respondent / Plaintiff has instituted the suit simplicitor for a decree of perpetual injunction. There is no boundary dispute nor the Petitioners / Defendants have preferred any counter claim.

2 The learned counsel for Petitioners / Defendants submits that there is a confusion about the identity of the suit property and as such, the appointment of Court Commissioner is necessary to correctly identify the suit property. The learned counsel in order to substantiate her contentions placed her reliance in the case of **Shreepat Vs. Rajendra Prasad**, reported in, **2000 (7) JT 379 : 2000 (6) Supreme**

389.

3 In the case cited above relied upon by the learned counsel for Petitioners, the Plaintiff in that suit, instituted the suit for declaration and possession and since the identity of the property was in question, the Supreme Court has remanded the matter for carrying out the inspection and to identify the property by appointing the Court Commissioner.

4 In the instant case, the suit is simplicitor for perpetual injunction. If at all the Respondent / Plaintiff fails to substantiate his claim about the property, he would fail in his suit. In absence of any counter claim on the part of the Petitioners / Defendants, I do not find any reason to interfere in the order passed by Trial Court. There is no substance in this writ petition. The writ petition is hereby dismissed. No costs.

[V. K. JADHAV, J.]

ndm