

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11512 OF 2016

Mangaldas s/o Ghanshyamdas Javheri

Petitioner

Versus

Rambhau s/o Dada Gaikwad
and others

Respondents

Mr.V.B.Garud, advocate for the petitioner

CORAM : S.B.SHUKRE, J.

DATE : 18th January, 2017

PER COURT:

Heard learned Counsel for the petitioner. Perused the impugned order.

2 The impugned order indicates that the application for appointment of Court Commissioner has been rejected by the learned 2nd Joint Civil Judge, Junior Division, Paithan, on the ground that the purpose, for which appointment of Court Commissioner has been sought, has no relevance with the issue involved in the suit and, in my opinion, rightly so. The purpose of appointment of Court Commissioner is to enable the Court to determine the controversy involved in the suit in an effective manner. The view taken by the learned Single Judges of this Court in the case of **Madhukar R. Javle Vs. Baskar Ramnath Shibad**, reported in 1996 (1) Mh.L.J. 245; and in the case of **Kalyan Santram Kawade and others Vs. Khanderao alias Khandu Ganpati Kawade & others**, reported in 2015 (4) Mh.L.J. 429,

which, I must say with due respect, is not applicable to the facts of the present case. When no issue of encroachment has been framed, no purpose is going to be served by appointing the Court Commissioner to inspect the spot and submit his report, as to whether anybody has done some construction thereon. The suit, as filed by the petitioner, is only for protection of his possession and nothing more.

3 In the result, I find that there is no merit in the writ petition and it deserves to be dismissed and stands dismissed summarily with costs. It is made clear that these observations are restricted only for the purpose of deciding this writ petition and shall not come in the way of the petitioner in prosecuting the suit, in accordance with law.

S.B.SHUKRE
JUDGE

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