

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10098 OF 2015

Shri. Sudam Trimbak Jadhav
And Ors

...Petitioners

Versus

Shri Bhaskar Punjaba Jadhav

...Respondent

....

Mr.Kuldeep S. Patil, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 19th JANUARY, 2017

P.C.

1. Heard Mr.Patil, learned Counsel for the petitioners, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.1 to 6', have challenged the judgment and order dated 28.8.2015 passed by the learned Civil Judge, Junior Division, Manmad below Exhibit-22 in R.C.S. No.38/2014. By that order, the learned trial Judge rejected the application made by defendants No.1 to 6 for appointment of Taluka Inspector of Land Records for inspecting Gats No.113 and 120 for fixing the boundaries after carrying out measurement and for submitting measurement map and report.

3. In support of this petition Mr. Patil submitted that the respondent has instituted the suit for perpetual injunction restraining defendants No.1 to 6 from disturbing his possession over Gat No.113 in all admeasuring 2 H 76 R and bounded as under :

To East :	Gat No.119
To West :	boundary of Ankai-Wanjarwadi village
To North :	Gat No.120
To South :	Gat No.112

4. Mr. Patil submitted that in paragraph-2 of the plaint, the plaintiff asserted that the defendants land bearing Gat No.120 is on the northern side of Gat No.113 and there is east-west bandh between the plaintiff's and defendants' property. He submitted that the defendants have filed written statement and have also set up counter claim. The defendants claimed that they are owner and in possession of Gat No.120 in all admeasuring 4 H 51 R. He has invited my attention to paragraphs-12 and 13 to contend that there is a boundary dispute between the parties and, therefore, it is necessary to appoint T.I.L.R. is for bringing the factual position on record as also for carrying out measurement.

5. I have considered the submissions of Mr. Patil. I have also perused the material on record. The learned trial Judge has observed in paragraph-3 that the suit is for perpetual injunction and the defendant by way of counter claim has sought injunction against the plaintiffs. The learned trial Judge has recorded that having regard to the nature of the suit as also a counter claim made by the defendants, no case is made out for appointment of Court Commissioner. For the reasons recorded in paragraph-3 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order as essentially parties will have to lead evidence to establish their respective possession over their respective properties. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)