

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 58 OF 2018

AMANULLA KHAN ABDUL HAMID KHAN
VERSUS
MANSOOR KHAN SHER KHAN AND OTHERS

...
Mr. M.K. Deshpande, Advocate for petitioner
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 22-06-2018

ORDER :

1. Heard learned counsel for petitioner.
2. Petitioner purports to have been aggrieved by order dated 08-03-2017 passed by district judge - 12, Aurangabad on application exhibit - 28 in regular civil appeal no. 328 of 2012.
3. Petitioner is plaintiff in regular civil suit no. 844 of 2005, seeking declaration of ownership and injunction in respect of 17 Acre of land *gat* no. 263, as described in the plaint. Suit had been dismissed and appeal had been preferred by petitioner - plaintiff which is pending before appellate court. During pendency of appeal, application exhibit - 28 referred to above, has been preferred for appointment of court commissioner. Application had been resisted on behalf of the respondents and the court, after hearing counsel for parties, found that the request could not be

entertained, as the suit is not for fixation of boundaries or for removal of encroachment. It is suit for declaration and injunction and in the circumstances, appointment of court commissioner would tantamount to creation of evidence.

4. Having regard to aforesaid, it is difficult to find fault with the impugned order. Writ petition, as such, is not entertained and is rejected.

[SUNIL P. DESHMUKH]
JUDGE

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