

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8916 OF 2014

Lahersing s/o Fakirsing Pardeshi
age 50 years, occ. business
r/o Pardeshipura
Paithan
Tq. Paithan, Dist. Aurangabad

Petitioner

Versus

1 Prakashsing s/o Tarachand Pardeshi
age 65 years, occ. nil
r/o House No. 322,
Ravivar Karqanja
Nashik
Dist. Nashik

2 Sanjay s/o Lakshman Pardeshi
age 50 years, occ. business
r/o Pardeshipura
Paithan
Tq. Paithan, Dist. Aurangabad

3 Chief Officer
Municipal Council, Paithan
Tq. Paithan, Dist. Aurangabad

Respondents

Mr. D.P. Palodkar, advocate for petitioner.
Mr. M.D. Joshi, advocate for respondent no.3.

CORAM : R.M.BORDE, J.
DATE : 19th APRIL, 2018

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith.

2. Heard finally at admission stage with the consent of learned counsel for the respective parties.

3. Petitioner is objecting to the order passed below Exh. 25 in Regular Civil Suit No. 26/2014 directing appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure for measuring the suit property and ascertaining encroachment allegedly made over the property.

4. Petitioner contends that trial Court has erred in entertaining the application at initial stage before taking up application at Exh. 5 presented by plaintiff for grant of interim injunction. It is the contention of petitioner that issuance of such order by the trial Court facilitates the plaintiff to collect evidence, which is impermissible. It appears that the suit presented in the year 2014 is stayed by this Court while entertaining the petition. The ends of justice would meet by directing the trial Court to proceed with the hearing of the suit.

5. The order passed by the trial Court below Exh. 25 having been issued at initial stage of the proceeding before framing of issues deserves to be quashed and set aside and the same is accordingly quashed and set aside. It would be open for the plaintiff to tender appropriate application at appropriate stage after framing of the issues by the trial Court, if need is felt for securing measurement of the property so as to ascertain encroachment. The trial Court may consider such application on its own merits and in accordance with law. Quashment of the impugned order in

the instant writ petition shall not be construed as an impediment for considering such application which plaintiff may present. Rule is accordingly made absolute. No costs.

R.M.BORDE
JUDGE

dyb