

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3453 OF 2017

ASHOK CHANGDEO LABADE AND OTHERS
VERSUS
SHREE MAHADEO DEVSTHAN TRUST THROUGH ITS PRESIDENT B S
LABADE AND OTHERS

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Advocate for Petitioners : Mr. Karpe Rahul R.

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CORAM : V. K. JADHAV, J.
DATED : 16th JANUARY, 2018

PER COURT:-

1. Heard.
2. I find no substance in this writ petition. The petitioners-original plaintiffs, instituted the suit for declaration and decree of perpetual injunction in respect of landed property. After full-fledged trial of the suit, the trial court has dismissed the suit by judgment and decree dated 18.07.2013. Being aggrieved by the same, the petitioners have preferred Regular Civil Appeal No. 42 of 2013. In the pending appeal, the petitioners have filed an application Exh.8 for appointment of Court Commissioner. The lower appellate court has rejected the said application by impugned order dated 27.7.2016.
3. On perusal of the documents submitted alongwith this writ petition, it appears that the petitioners have filed an application Exh.8

seeking appointment of Court Commissioner to ascertain as to existence of way in the suit property. The petitioners have also submitted similar application before the trial court during pendency of the suit. However, the said application came to be rejected. The learned Judge of the lower appellate court has rightly observed that the dispute in question is not with regard to either the identity of lands or boundary dispute and as such the Court Commissioner cannot be appointed for the purpose of collection of evidence.

4. In view of above, I do not find any fault in the impugned orders. There is no substance in the writ petition. Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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