IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8394 OF 2017

LADALESAHEB ABDUL SAYYED AND ANOTHER
VERSUS
KALIM SHIRAJSAHEB SAYYED
...
Advocate for Petitioners : Mr. Gunale V.D.
Advocate for Respondents : Mrs Mapari Savita G.
...
CORAM : V.K. JADHAV, J.
Dated: January 17, 2018
...

PER COURT :-

1. Heard. I find no substance in this writ petition.

2. Being aggrieved by the judgment and decree passed by the trial Court thereby dismissing the suit of the petitioner/plaintiff, the petitioner/plaintiff has preferred R.C.A. No.41/2014. During the pendency of the appeal, the petitioner/plaintiff has filed an application Exh.23 to appoint the Taluka Deputy Superintendent of Land Records to measure the suit plot and also plot of the defendants jointly and to place on record the report and map showing exact location of of these two plots.

3. The petitioner/plaintiff has instituted the R.C.S. No.388/2010 for declaration of the ownership and a decree of perpetual injunction against the defendants contending therein that the petitioners/plaintiffs are in possession of the suit plot as owner thereof. Respondent/defendant has denied the existence of the suit plot and also further denied the possession of the plaintiffs on the suit plot. Trial court on appreciation of the evidence has recorded the findings to the concerned issue in the negative and thereby held that the petitioners/plaintiffs have failed to prove his title and possession in respect of the suit plot.

4. I am agree with the observations made by the lower appellate court that the petitioner/original plaintiffs were obliged to prove the title to the suit land and possession therein and that the burden is on them to prove their title and so also possession on the suit plot on the basis of the documents and oral evidence. In such a suit wherein relief is restricted to the extent of declaration and a decree of perpetual injunction,

appointment of the Court Commissioner would amount to collection of evidence. The lower appellate court has rightly rejected the application exh.23. No interference is required in this Writ Petition. There is no substance in this writ petition. Writ Petition is hereby dismissed. No costs.

5. These observations have been made only to dispose of this writ petition and the lower appellate court shall decide the pending appeal on its own merits.

(V.K. JADHAV, J.)

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aaa/-