

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 12727 OF 2017

LAXMIBAI DATTATRYA LAHIRE
VERSUS
JAISHREE PADMAKAR KHEKALE AND OTHERS

.....
Advocate for Petitioner : Mr. Mehta Punit S.
Advocate for Respondent Nos. 1 to 4 : Mr. Patni Pramod F.

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CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/original defendant has filed an application exhibit 29 in R.C.S. No. 821 of 2016 for appointment of Court Commissioner. The trial court has rejected the said application. Hence this Writ Petition.
3. The learned counsel for the petitioner submits that though the respondents/plaintiffs have instituted the suit simpliciter for a decree of perpetual injunction, in para 11 of the plaint, the respondents/plaintiffs have specifically pleaded that there is near about 30 feet wide road which is in use for ingress and egress to

the property of the plaintiffs and if the defendant forcibly take possession without any authority of law and without having any right, title and interest over the suit property, in that event the entire road would be blocked and the property of the plaintiff would become land-lock.

4. The learned counsel submits that the respondents/plaintiffs have also filed a rough map, which is the part of the plaint wherein the existence of the said road has been shown in the property owned and possessed by the petitioner. The learned counsel submits that in such eventuality, it is necessary to appoint Court Commissioner to inspect the spot directing further to submit a report about existence of the said road, when the very existence of road has been specifically denied by the petitioner/original defendant.

5. Learned counsel for the respondents/original plaintiffs submits that the trial court has rightly rejected the application on the ground that it amounts to collection of evidence.

6. On careful perusal of the pleadings and the impugned order passed by the trial court, it appears that the

respondents/plaintiffs have instituted the suit for a decree of perpetual injunction and in para 11 of the plaint, it has been specifically pleaded about existence of 30 feet wide road towards the southern side of the land of the petitioner/defendant. The petitioner/defendant has specifically denied the same. It is for the respondents/plaintiffs to prove their claim. The collection of evidence through the Court Commissioner is impermissible. The trial court has rightly observed the same and accordingly rejected the application. It is not out of place to mention here that the respondents/plaintiffs have placed on record a rough sketch of the property and on the other hand, the petitioner/defendant has produced the map prepared by the City Survey Officer. It is for the trial court to decide the suit on its own merits after considering the evidence on record and certainly not on the basis of Court Commissioner's inspection report which is nothing but collection of evidence. I find no substance in the Writ Petition. The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

vsm/