

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13185 OF 2017

MAROTI GANGARAM CHOWDHARI AND OTHERS
VERSUS
GANDHARABAI NARSING PARKHE AND OTHERS

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Advocate for Petitioners : Mr. Gunale V.D.
Advocate for Respondents : Mr. S.A.P. Quadari

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CORAM : V. K. JADHAV, J.
DATED : 7th FEBRUARY, 2018

PER COURT:-

1. With consent of learned counsel for the parties, heard finally at admission stage.
2. The impugned order dated 15.9.2017 passed by the trial court below Exh.73 in R.C.S. No. 120 of 2015 is incorrect, improper and illegal.
3. The petitioners-original plaintiffs have instituted the suit simplicitor for decree of perpetual injunction. The respondents-defendants have strongly resisted the said suit by filing written statement, however, the respondents-defendants have not filed any counter claim. Thus, in the suit filed simplicitor for decree of perpetual injunction, it is for the petitioners-plaintiffs to prove their case and in absence of any counter claim, there is no reason for the

respondents-defendants to file an application Exh.73 for appointment of Court Commissioner. Further, on perusal of contents of application Exh.73, it appears that the respondents-defendants have specifically contended that the application has been filed for appointment of Court Commissioner to determine the legal and factual possession of the respondents-defendants over the suit land. The same is impermissible and collection of evidence under the garb of appointment of Court Commissioner is held to be bad in catena of judgments of this Court. In view of above, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 15.09.2017 passed by 4th Joint Civil Judge, Junior Division, Udgir below Exh. 73 in R.C.S. No. 120 of 2015 is hereby quashed and set aside. The application Exh.73 is hereby rejected.
- III. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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