

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14163 OF 2017

BAJIRAO LAXMAN SURWASE
VERSUS
YAMUNABAI AANURATH SURWASE AND OTHERS

...
Advocate for Petitioner : Mr. Jethliya Dhiraj R.

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CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2018

PER COURT:-

1. The petitioner-original defendant preferred this writ petition against the order passed below Exhibit-14 by the Trial Court. The respondents-plaintiffs have filed the application Exhibit-14 seeking appointment of Court Commissioner and by impugned order dated 7.10.2017, the Trial Court has allowed the said application. Hence, this writ petition.

2. Learned counsel for the petitioner submits that the Trial Court has not framed the issues and still then allowed the application for appointment of Court Commissioner at premature stage. Learned counsel thus, placed reliance on order dated 17.1.2012 passed by this Court in writ petition No. 9089 of 2011 (Ayyaz Shoukatali Sayyed and Anr. vs. Mohd. Moid @ Ajamatali s/o Mohd. Yasin Shaikh and others) and the order dated 17.1.2014 passed by this Court (both Coram: S.V. Gangapurwala, J.) in writ petition No. 8877 of 2013 Chandrakant

Kashinath Dike and Ors vs. Smt. Satyabhama Vishwanath Dike and Anr), wherein this court has taken similar view that at the premature stage when the issues are not yet framed, the trial Court should not appoint the Court Commissioner at the behest of the parties.

3. In the instant case, it appears that the respondents-original plaintiffs have instituted the suit for removal of the encroachment and for recovery of possession of encroached portion. It further appears that the pleadings are complete and there is no application pending seeking the relief of injunction. Learned counsel submits that even for seeking temporary injunction order, the application is not filed at all. In the above cited two cases, this court has considered pendency of application seeking order of issuance of temporary injunction and thus, observed that it is a premature stage before deciding the application for temporary injunction to appoint the Court Commissioner. In the suit wherein removal of encroachment and possession of encroached portion is sought, appointment of Court Commissioner would assist the Court to adjudicate the case completely. I do not find any fault in the impugned order. Writ petition is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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