

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

907 WRIT PETITION NO. 15360 OF 2017

SAU. SITABAI LAXMAN GAIKWAD
VERSUS
MANGO MAHIPAT GAIKWAD (BHIL)

...
Advocate for Petitioner : Mr. B. R. Waramaa.
...

CORAM : **V. K. JADHAV, J.**
DATE : 10th January, 2018.

ORDER:

. The Petitioner / original Defendant has challenged the order passed by the Trial Court below Exhibit 26. The Respondent / original Plaintiff has filed an application Exhibit 26 for appointment of Court Commissioner and the Trial Court has allowed the said application.

2 The learned counsel for Petitioner / Defendant submits that the Respondent / Plaintiff has instituted the suit for a decree of perpetual injunction and recovery of possession of the encroached portion. The learned counsel submits that without showing the specific encroached portion in the suit and recovery of possession of the

specified portion of the suit property, the Respondent / Plaintiff has instituted the suit and as such, the suit itself is not maintainable. The learned counsel submits that the Respondent / Plaintiff has not stepped into the witness box and as such, his application seeking appointment of Court Commissioner is premature one, even then the Trial Court has allowed the said application Exhibit 26.

3 I find no substance in the submissions made on behalf of the Petitioner. The suit has been instituted for a decree of perpetual injunction and also for recovery of possession of the encroached portion. It is the case of the Respondent / Plaintiff that the Defendant is restraining the Plaintiff to take water from the well and has also encroached on the suit property to the extent of 10 to 15 feet from the eastern side of the suit property bearing Gat No.39. It is the settled position of the law that in such a dispute regarding the boundaries of the land and the encroachment, the Court Commissioner is required to be appointed and it does not amount to the collection of evidence. This Court has not expressed any opinion whether the suit is maintainable or not. I do not find any fault in the order passed by the Trial Court allowing the application Exhibit 26 and appointing the Taluka Inspector of Land Records as Court Commissioner with certain

directions that includes the measurement of the land of the Petitioner / Defendant also. The writ petition is accordingly dismissed. No costs.

[V. K. JADHAV, J.]

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