

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7089 OF 2017

Shri Nemgonda Chavgonda Patil and anr. .. Petitioners
Vs.
Shri Pravin Balgonda Patil and ors. .. Respondents

Mr. P. D.Pise, for the Petitioners.
Mr.Nagesh Y. Chavan, for the Respondents.

CORAM : M.S.KARNIK, J.

DATE : 13th FEBRUARY, 2018

P.C. :

1. The petitioners – original plaintiffs have challenged the order dated 17/01/2017 passed by Joint Civil Judge, Junior Division, Miraj below Exhibit 55 in Regular Civil Suit No. 399 of 2015. The petitioners had filed Suit for simplicitor injunction in respect of a cart-way which passes through the defendant's land. Initially application was made by the petitioners for appointment of a Court Commissioner. The said application was allowed and it was found that there exists a cart-way from the said land belonging to the defendants. Based on the report filed by the Court Commissioner, some controversy arose as to what is

the exact measurement of the width of the cart-way in question. It is the contention of the learned Counsel for the respondents – defendants that cart-way passes through their property and the report filed by the Court Commissioner on the earlier occasion indicates variation in the width of the road. Respondents in this Petition have therefore filed an application below Exhibit 55 before the trial Court for appointment of a Court Commissioner.

2. Learned Counsel for petitioners submitted that factual position of the cart-way was already brought on record as per earlier Court Commissioner's report. Now by filing second application respondents want fixation of boundaries of this property. This is not permissible in a Suit which has been filed by the petitioners simplicitor for injunction.

3. Heard learned Counsel. Perused the impugned order. It is not in dispute that the cart-way is passing through the property of the defendants. Even in the Court Commissioner's report submitted on the earlier occasion, it is

mentioned that the cart-way is in existence. However, earlier Court Commissioner's report indicates that there is variation in the width of the cart-way. If by filing of the present application, the defendants want to ensure demarcation of the boundaries of their own land, I do not find any reason to interfere with the order passed by the trial Court. Though there is some merit in the contention of the petitioners that in a Suit filed by the plaintiffs, the defendants would not be justified in filing interim application for measuring their boundaries, nevertheless, I am of the opinion that this aspect can be dealt with by the trial Court while deciding the Suit. There is no prejudice to the petitioners if the Court Commissioner submits a report in terms of the impugned order passed by the trial Court.

4. Subject to what is mentioned hereinbefore, I see no reason to interfere with the order passed by the trial Court in exercise of jurisdiction of this Court under Article 227 of the Constitution of India. Petition is rejected.

(M.S.KARNIK, J.)