

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11184 OF 2017

Laxman Dnyanoba Lamkane & Ors.	 Petitioners
V/s.	
Madhukar Dattu Kaulage & Ors.	 Respondents

Mr. Vishwanath S. Talkute for the Petitioners.

Mr. Shankar Katkar, i/by Ms. Manisha Devkar, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

P.C. :

1. Heard Mr. Talkute, learned counsel for the Petitioners, and Mr. Katkar, learned counsel for the Respondents.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 28th August 2017 passed by the 5th Joint Civil Judge, Junior Division, Pandharpur, below "Exhibit-45" in Regular Civil Suit No.434 of 2015.
3. The application at "Exhibit-45" was filed by the Petitioners for appointment of 'Court Commissioner', in order to bring on record the fact of existence of the road, in respect of which the relief of injunction is sought in the Suit. The Trial Court has rejected the said application on the count that, it would amount to collection of evidence.

4. However, it is pertinent to note that the Respondents have also applied for appointment of 'Court Commissioner' to ascertain existence of the disputed road; however, that application was also rejected.
5. Thus, it is apparent that both the parties are keen to bring on record the fact of existence of the road and in such situation, if the relief of injunction is also claimed in respect of the said road, then, in order to decide the dispute between the parties completely, effectually and finally, it would be necessary to appoint the 'Court Commissioner'.
6. Accordingly, the impugned order passed by the Trial Court is quashed and set aside, by allowing this Writ Petition.
7. The application at "Exhibit-45" for appointment of 'Court Commissioner', filed by the present Petitioners, is allowed.
8. Both the parties to suggest the name of the 'Court Commissioner' and the Trial Court to pass the order accordingly.
9. Parties to appear before the Trial Court on Monday, the 5th February 2018.
10. Writ Petition is disposed of in the above terms.
11. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]