

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO.4137 OF 2018

LAXMAN BABURAO FOLANE
VERSUS
MOHAN CHANDRABHAN GAVANDE AND OTHERS

.....
Advocate for Petitioner : Mr. Pathan Zafar M
Advocate for Respondents : Mr. M.R. Khutwad
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CORAM : V. K. JADHAV, J.
DATED : 28th NOVEMBER, 2019

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The petitioner-original plaintiff has instituted R.C.S. No. 859 of 2013 simplicitor for decree of perpetual injunction. In the pending suit, the petitioner has filed an application Exh.75 under Order 26 Rule 9 of C.P.C. for appointment of Court Commissioner. Learned Judge of the trial court by impugned order dated 23.2.2018 rejected the said application. Hence, this writ petition.
3. Learned counsel for the petitioner submits that there are two canals flowing from east-west side of the suit land and appointment of the Court Commissioner is necessary to find out the exact location of the those two canals and their flowing directions. Learned counsel submits that the appointment of Court Commissioner is necessary for just decision in the suit. However, the trial court has not considered the same and rejected the application.

4. Learned counsel appearing of the respondents-original defendants support the impugned order passed by the trial court.

5. In a suit seeking relief of perpetual injunction, the petitioner plaintiff has filed an application Exh.75 for appointment of Court Commissioner. Even on careful perusal of plaint and the contents of application Exh.75, I do not find any justification for appointment of Court Commissioner. There is no reason to appoint the Court Commissioner to find out the direction of those two canals. Furthermore, even if the same is considered for some or other reason by appointing the Court Commissioner in a suit for perpetual injunction, no evidence can be collected in the manner in which the petitioner-plaintiff has proposed. I find no fault in the impugned order passed by the trial court. There is no substance in this writ petition. Hence, the following order:-

O R D E R

Writ petition is hereby dismissed and disposed of accordingly.

(V. K. JADHAV, J.)

rlj/