

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.8380 OF 2019

DATTU NARAYAN SHEVALE AND OTHERS
VERSUS
NANA GANGARAM JAPKAR AND OTHERS

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Advocate for Petitioners : Shri Deshmukh Ajinkya
h/f Shri Hon Ashwin V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 16, 2019

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 7.2.2019, passed by the trial Court, rejecting application Exhibit 126, filed by the petitioners, seeking appointment of a Court Commissioner in RCS No.342 of 2011.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. He has drawn my attention to the nine grounds formulated in the memo of his petition. He submits that Exhibit 126 was filed after the recording of oral evidence was concluded and presently the matter is posted on 17.7.2019 for advancing final arguments.

3. Despite the strenuous submissions of the learned Advocate for the petitioners, I find that the petitioners have sought the appointment of a Court Commissioner to inspect the suit properties and find out as to

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whether there is a well or a pipeline or electricity connection in the said property. It is further prayed that the Court Commissioner can examine as to who is actually in possession and to what extent is the possession of the respective sides. Such a report would assist the trial Court, is the contention.

4. It requires no debate that a Court Commissioner is not be appointed for collecting evidence. A Court Commissioner could be appointed by the trial Court only if it finds that some more information is required to be elicited through such an order.

5. The trial Court has delivered a reasoned order concluding that the suit is purely for perpetual injunction and a declaration that the sale deeds should not be held as binding upon the plaintiffs and the same be declared as void. On these premises, the trial Court has rejected Exhibit 126.

6. I do not find that the conclusions drawn could be said to be perverse or erroneous. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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