

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2434 OF 2016

Ankush Daji Mohite and anr.	.. Petitioners
Vs.	
Shri Ramesh Ramchandra Kulkarni	.. Respondent

Mr.Kuldeep U. Nikam, for the Petitioners.
Mr.Samir A.Kumbhakoni, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE :06th SEPTEMBER 2019

P.C. :

. Heard learned Counsel.

2. The petitioners are the original defendants. The challenge in this Petition filed under Article 227 of the Constitution of India is to an order dated 08/02/2016 passed by the trial Court in Regular Civil Suit No. 139 of 2014 below Exhibit 28 allowing the application filed by the petitioners under Order XXVI Rule 9 of C.P.C for appointment of the Court

Commissioner. The respondent – plaintiff filed Suit before the trial Court claiming easementary right over the user of the road and restraining defendants from causing any obstruction and interfering with the user of the road by the plaintiff.

3. The defendants filed written statement. It is one of the plea in the written statement that the plaintiff has an alternate way to approach the Suit land. Based on this and to find out whether there is an alternate way, the plaintiff filed application below Exhibit 28 for appointment of the Court Commissioner for local inspection. The said application came to be allowed.

4. It is settled law that the Court Commissioner cannot be appointed to collect evidence. Moreover, the parties are yet to lead their evidence. A plea has been raised by the defendants that the plaintiff has an alternate way to approach the Suit land.

5. In this view of the matter, trial Court should not have allowed the application for appointment of the Court Commissioner at this stage. Impugned order passed by the trial Court is therefore set aside. Application Exhibit 28 stands rejected. Petition is allowed.

6. After the evidence is recorded, if an application is made by the plaintiff for appointment of the Court Commissioner, the same can always be considered by the trial Court on its own merits without being influenced by any observations made in this order.

(M.S.KARNIK, J.)