

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

975 WRIT PETITION NO.2300 OF 2019

CHANDRAKANT BABURAO KHOSE AND ANOTHER
VERSUS
BANSI HARIBA KUKAR

...
Advocate for Petitioners : Mr. Murge Estling S
Advocate for Respondent : Mr. S. S. Rathi
...

CORAM : V. K. JADHAV, J.
DATED : 11th March, 2020

PER COURT :-

1. By consent heard finally at admission stage.
2. The petitioners are the original defendants. The respondent – plaintiff has instituted suit bearing Regular Civil Suit No.521 of 2013 for declaration and decree of perpetual injunction in respect of the suit property before the Civil Judge, Senior Division, Latur. After the plaintiff's evidence was over, the petitioners – original defendants filed application Exhibit-53 in the said suit before the Civil Judge, Junior Division, Latur for appointment of Court Commissioner. By impugned order dated 10.08.2018, the 2nd Jt. Civil Judge, Junior Division, Latur, has rejected the said application. Hence this writ petition.

3. Learned counsel for the petitioners – original defendants submits that the witnesses for the plaintiff have made a contradictory statement as against the record so also against the plaintiff's evidence about the boundaries of suit property. It was thus necessary for the petitioners – defendants to file application for appointment of Court Commissioner. However, the trial Court has erroneously rejected the said application.

4. Learned counsel for the respondents submits that there is no dispute regarding the boundaries of suit property. The petitioners - defendants without entering into the witness box filed the application for appointment of Court Commissioner which is contrary to the law laid down by this Court in various cases. The trial Court has rightly passed the order, which is impugned in this writ petition. There is no substance in the writ petition and the same is liable to be dismissed.

5. On going through the contents of the application Exhibit-53 and pleadings about boundaries and the impugned order below Exhibit-53, it appears that the petitioners have filed the application Exhibit-53 mainly on the ground that the plaintiff's witness nos. 2 & 3 have given certain admissions in

their cross-examination about the boundaries towards western side of suit property and the same is contradictory to the plaintiff's description of the suit property bearing Grampanchayat No.553. If such is the case, then the plaintiff would fail in his suit but certainly the defendants should not bother about the same. Furthermore, the trial Court has observed in the impugned order that the defendants are not challenging the boundaries or location of the suit property. It is the defence of the defendants that defendant no.1 had not delivered possession to the plaintiff as the plaintiff had not paid the consideration amount. Learned counsel for the respondent has pointed out that the suit instituted by the petitioners - defendants in respect of the same suit property bearing Regular Civil Suit No.558 of 2008 came to be dismissed on 04.07.2011. Thus, considering the entire aspect of the case, I find no fault in the impugned order. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby dismissed.

(V. K. JADHAV, J.)