

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5402/2020

RUSHIKESH LIMBAJI GHOLAVE, MINOR, UNDER GUARDIANSHIP
OF REAL MOTHER JIJABAI LIMBAJI GHOLAVE
VERSUS
DEVIDAS SHANKAR SARAOK & ANOTHER.

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Shri Arvind Deshmukh, Advocate for petitioner.
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CORAM: V.L. ACHLIYA, J.

DATE: 07.08.2020

PER COURT :

- 1] Heard learned counsel for the petitioner.
- 2] Being aggrieved by order dated 22.6.2019 passed by learned Joint Civil Judge (J.D.), Jintur, in Regular Civil Suit No.58/2017 to reject application (Exh.5) moved under Order 39 Rules 1 & 2 of the Code of Civil Procedure seeking temporary injunction, the petitioner preferred Miscellaneous Civil Appeal No.49/2018 before the District Judge, Parbhani. By the order dated 2.3.2020 passed by learned District Judge, Parbhani, the appeal preferred by the petitioner came to be rejected and order passed by learned Joint Civil Judge (J.D.), Jintur, came to be confirmed. Being

aggrieved, the petitioner has preferred this petition.

3] In brief, it is the contention of learned counsel for the petitioner that the Court below erred in appointing Commissioner at the stage of hearing the application seeking temporary injunction. It is submitted that appointment of Commissioner can be made only for the limited purpose to assess the evidence and not for the purpose of collecting the evidence for the parties to the proceeding. It is submitted that the Courts below failed to appreciate the contentions raised by the petitioner that the report of Commissioner cannot be the basis to decide the application seeking temporary injunction.

4] On due consideration of the submissions advanced in the light of orders under challenge, I am of the view that no case is made to entertain the writ petition. The orders passed are reasoned and suffer from no perversity so as to call for interference in exercise of writ jurisdiction. It is apparent from the order dated 22.6.2019 passed by learned Joint Civil Judge (J.D.), Jintur, that appointment of Taluka Inspector of Land Records has been made as a Court Commissioner on the basis of applications (Exhibits 23 & 26) filed under Order 26 Rule 9 of the CPC by the plaintiff as well as defendants in the suit. In that view, the contention raised by the petitioner that the Courts below erred in relying upon the report of

Court Commissioner for deciding the application (Exh.5) is devoid of merits. The observations made by the trial Court in paragraph nos.7 & 8 read as under:-

“7] I have bestowed my thoughtful consideration to rival submissions advanced on behalf of the parties and documents placed on record. Here it is necessary to mention that, during the pendency of present application, the plaintiff and the defendants filed applications below Exh. 23 and 26 vide Order XXVI Rule 9 of the Code of Civil Procedure for measurement of suit property by appointing court-commissioner. Said applications were allowed and court-commissioner was appointed for measurement of the suit property. Accordingly, the court-commissioner filed his report along with Map at Exh.33. On said report, plaintiff filed her say at Exh.41 and admitted the report. I have perused the report and map. It appears that, some other persons made encroachment over the suit property and plaintiff is not in possession of the entire suit property. Therefore, there is no question of obstruction at the hands of defendants to the plaintiffs possession over the suit property.

8] *Prima facie* it appears that, some other persons made encroachment over suit property. Therefore, present suit for simplicitor injunction is itself not maintainable. Therefore, this application is also not maintainable.”

5] In view of above, the petition filed is devoid of merits. I am, therefore, not inclined to entertain the petition. The petition is dismissed with no order as to costs.

(V.L. ACHLIYA, J.)