

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 WRIT PETITION NO. 15588 OF 2019

BALU DEVIDAS DANDGE AND OTHERS
VERSUS
SHAIKH BASHER SHAIKH GULAB

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Advocate for Petitioners : Mrs. Kulkarni Smita S.

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CORAM : V. K. JADHAV, J.
DATED : 06th JANUARY, 2020

PER COURT:-

1. The petitioners are the original defendants. The respondent/ plaintiff has instituted Regular Civil Suit No. 107 of 2013 for a decree of perpetual injunction in respect of his land gat no. 111 to the extent of 1 H 20 R situated at Takli-Rajarai, Taluka Khultabad, District Aurangabad. The petitioners/defendants have strongly resisted the suit by filing a written statement wherein a specific defence has been raised that the boundaries of the suit property as mentioned in para no.1 of the plaint are imaginary and the plaintiff may be called upon to prove the existence of suit property with the boundaries as mentioned in para no.1 of the plaint. The petitioners/defendants have also filed counterclaim for a decree of perpetual injunction in respect of the land gat no. 80 to the extent

of the land admeasuring 2000 square feet. Pending suit, the petitioners/defendants filed an application for appointment of Court Commissioner and by the impugned order dated 09.08.2019 passed below Exhibit 31 in Regular Civil Suit No. 107 of 2013, the trial court rejected the said application. Hence this Writ Petition.

2. Learned counsel for the petitioners/defendants submits that though the suit is for simplicitor perpetual injunction, in fact a boundary dispute has been raised. Learned counsel submits that the eastern side boundary of the suit property i.e. the nala in between the land of the petitioners/defendants and the respondent/plaintiff would be the crux of the matter. In view of the same, measurement through the Court Commissioner is necessary to resolve the dispute.

3. On careful perusal of the impugned order passed below Exhibit 31, it appears that the trial court has rejected the application on the ground that in a suit for injunction, collection of evidence is impermissible. I do not find any fault in the impugned order passed by the trial court. In a suit for injunction, the court has to consider as to who is in lawful possession of the suit

property and those powers cannot be delegated to the Commissioner to find out as to who is in actual possession of the suit property. In view of this, I find no substance in this Writ Petition. The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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