

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

26 WRIT PETITION NO.683 OF 2020

LAXMAN MAROTI BHADALE
VERSUS
DNYANOBA SAMBHAJI MITKARI AND ANOTHER

...
Advocate for Petitioner :Mr. Patil Ramchandra S .

...
CORAM : ROHIT B. DEO, J.
Date: January 14, 2020

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PER COURT :-

1 The petitioner is the plaintiff in RCS No.554/2016 who is aggrieved by refusal of the trial Court to appoint Court commissioner for fixing the common boundaries between the land of the rival parties.

2 I do not see any error in the order impugned, much less an error warranting exercise of writ jurisdiction.

3 Even according to the plaintiff, the boundaries are not in dispute. If the boundaries are not in dispute, the observation of the trial Court that the plaintiff is attempting to collect the evidence qua the alleged encroachment, cannot be branded as perverse.

4 The trial court has noted that the ownership of the plaintiff is not in dispute. In this view of the matter, the trial Court has held that if Court Commissioner is appointed at this stage, the plaintiff would, in a sense, be permitted to collect the evidence.

5 While I am not inclined to interfere in the order impugned, it is made clear that the petitioner - plaintiff shall be at liberty to apply afresh after the entire evidence is recorded and if such an application for appointment of Court Commissioner is made after the conclusion of the evidence, the same shall be decided on its merits and uninfluenced by any observation in the order impugned.

6 The petition is disposed of.

(ROHIT B. DEO, J.)