

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO. 5729 OF 2021

PRALHAD KONDIBA PAWAR AND ANOTHER
VERSUS
BHARAT MARTAND GHANWAT AND OTHERS

.....
Advocate for Petitioners : Mr. Sanket S. Kulkarni h/f
Mr. Dilip B. Rode
.....

CORAM : V. K. JADHAV, J.
DATED : 1ST APRIL, 2021

PER COURT :-

1. I have heard learned counsel for the petitioners at length.

2. The Respondents have instituted a suit bearing R.C.S. No. 203 of 2009 for recovery of possession of the encroached portion of the suit land. It appears that the respondents/plaintiffs have instituted the said suit on the basis of the measurement of the map drawn by the T.I.L.R., Shrigonda. In the pending suit, at the time of final argument, the petitioners/original defendants filed an application Exhibit 60 for appointment of Court

vre/-

Commissioner. According to them, they have never encroached on the portion of the land Gat No. 54 and their land Gat No. 59/1 is not measured along with suit land Gat No. 54 and thus, appointment of Court Commissioner is necessary to find out the correct position. The trial court has rejected the said application by the impugned order dated 02.03.2021.

3. Learned counsel for the petitioners has vehemently submitted that the petitioners have also instituted a suit for a decree of perpetual injunction in respect of their land Gat No. 59/1 and in the said suit also they have filed an application for appointment of Court Commissioner which application came to be rejected by the trial court in the said suit. Learned counsel submits that in both the suits, the issue involved is as to whether there is any encroachment over the portion of land Gat No. 54. Learned counsel submits that if the Court Commissioner is appointed in terms of the application Exhibit 60 in R.C.S. No. 203 of 2009, the said controversy would be resolved.

vre/-

4. It is the suit of the year 2009. It appears that at the time of final argument, the petitioners/original defendants filed application Exhibit 60 stating therein that their land bearing Gat No. 59/1 was not measured along with suit land Gat No. 54. However, it appears from the observations made by the trial court in para 4 of the impugned order that P.W.2, who is the Surveyor, has measured the old Survey No. 53 of village Limpangaon which includes plaintiffs' Gat No. 54 and the petitioners' land bearing Gat No. 59/1. In view of the same, I find no substance in the submissions made on behalf of the petitioners that their land Gat No. 59/1 was not measured along with the suit land Gat No. 54. It further appears that in a suit instituted by the respondents/plaintiffs for removal of encroachment and for recovery of the encroached portion, the petitioners, who are the defendants, filed an application for appointment of Court Commissioner which is unwarranted and uncalled for. It further appears from the observations made by the trial court in the impugned order that even though ample opportunities were

vre/-

given to the petitioners/defendants to adduce their evidence, however, they have not taken steps at the initial stage. Though the learned counsel for the petitioners vehemently submitted that the trial court has not given an opportunity of being heard to the petitioners while deciding the application Exhibit 60, however, it appears that on 02.03.2021, the trial court has passed the order on Exhibit 60 recording absence of the parties and thereafter passed the impugned order for the reason that the suit is 10 years old and at the very belated stage, the petitioners have filed an application for appointment of Court Commissioner.

5. In view of the above, I find no substance in this Writ Petition. The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

vre/-