

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 5477 OF 2021

BHAURAO LIMBAJI SHELKE
VERSUS
GUNDA MUKINDA SHELKE AND OTHERS

.....
Advocate for Petitioner : Ms. Madhaveshwari S. Mhase

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CORAM : V. K. JADHAV, J.
DATED : 30TH MARCH, 2021

PER COURT :-

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

2. The petitioner is the original plaintiff. The petitioner has instituted the suit bearing R.C.S. No. 84 of 2016 simplicitor for a decree of perpetual injunction. Learned counsel for the petitioner submits that by taking undue advantage of the order passed by the Mamlatdar in the Rasta Case, the respondents are now trying to create a new way from the suit land exclusively owned and possessed by the petitioner. Learned counsel submits that even the other side has also not disputed the order passed by the Mamlatdar in
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the said Rasta Case. Learned counsel submits that despite the alternate roads available to the respondents/original defendants, by taking undue advantage of the order passed by the Mamlatdar, the respondents/defendants are trying to create a new way. In view of the same, the petitioner has rightly filed an application for appointment of court commissioner to point out the other alternate ways available to the respondents-defendants. However, the trial court has rejected the said application by passing the impugned order.

3. It appears that in a suit simplicitor for a decree of perpetual injunction, the petitioner has filed an application seeking appointment of Court Commissioner. Furthermore, on perusal of the order passed by the Mamlatdar, it appears that the order is very specific, directing the present petitioner to remove the impediments on the road which passes in a certain direction. In view of the same, if the respondents/defendants, by taking undue advantage of the said order passed by the Mamlatdar in the Rasta Case, are trying to create a new way, the petitioner can very well make

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submissions on the basis of his pleadings supported by evidence so also by referring the clear order passed by the Mamlatdar in the aforesaid Rasta Case. I hardly find any reason for appointment of court commissioner. I do not find any error in the order passed by the trial court rejecting the application Exhibit 49 seeking appointment of Court Commissioner. There is no substance in the Writ Petition. The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)