

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

WRIT PETITION NO.6932 OF 2022

**MARUTI GENU AHIRE AND ANOTHER
VERSUS
SHOBHA GANGADHAR JORVEKAR AND OTHERS**

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Advocate for Petitioners : Mr. Nitin S. Kadarale

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CORAM : MANGESH S. PATIL, J.

DATED : 06 JULY 2022

PER COURT :

The petitioners are original defendants no.1 and 2 defending a suit for perpetual injunction simplicitor filed by the respondents. They are aggrieved by the rejection of their application by the trial court, whereby they had prayed for appointment of a court commissioner under Order XXVI Rule 9 of the Code of Civil Procedure for carrying out measurement.

2. I have heard the learned advocate for the petitioners. It appears that the petitioners are insisting to demonstrate as to how a land admeasuring 30 Are in their possession is a part and parcel of the land gut no. 582, which is the suit property.

3. Apart from the fact that in spite of it being a suit for perpetual injunction simplicitor and apart from the fact that the application is premature in as much as, even before the respondents could begin their evidence, this application has been filed, the whole purpose of moving the application

seeking appointment of commissioner seems to be to somehow enable a measurement to be carried out and perhaps to demonstrate that a 30 Are portion is in possession of the petitioners.

4. Needless to state that a scheme must have been finalized under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, wherein suit property gut bearing no.582 totally admeasuirng 73 Are must have been formed. There is no whisper in the contentions of the petitioners touching this aspect. It is not their concrete version that there was some error or mistake in finalizing the scheme under the Consolidation Act. Obviously, they may have their own remedies under that Act.

5. The point remains that this is a suit for perpetual injunctions. The respondents claim to be in possession of the 46 Are portion out of gut no. 582. If they are able to prove the possession they would be entitled to claim injunction. As of now, there is no challenge to the total extent of land gut no. 582.

6. There is no illegality in the order passed by the trial court in rejecting the application.

7. Writ petition is dismissed.

(MANGESH S. PATIL, J.)

Tandale/-