

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4266 OF 2020

MAHADU VISHWANATH WAGHMARE
VERSUS
KERB GYANU WAGHMARE AND OTHERS

...
Advocate for Petitioner : Mr. V. V. Bhavthankar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10-01-2022

PER COURT :-

Heard learned Advocate for the petitioner.

2. The petitioner challenges Judgment and order below Exhibit-165 dated 17.01.2020, in Regular Civil No. 15 of 2009, passed by the learned Civil Judge, Junior Division, Palam, thereby rejecting the application filed by the petitioner-original plaintiff seeking appointment of Taluka Inspector of Land Records (TILR) as court commissioner.

3. Learned Advocate for the petitioner strenuously urged that the trial Court has committed error in rejecting the application as in the facts of the case, appointment of TILR ought to have been granted.

4. The petitioner-original plaintiff no. 3 has filed the suit for

relief of declaration and perpetual injunction. The trial Court has framed issue regarding possession of plaintiffs over the suit property. The plaintiffs are required to prove their possession over the suit property. The plaintiffs closed their evidence on 15.02.2019 and the defendants closed their evidence on 13.12.2019. The present application is moved when the suit is fixed for final arguments.

5. The trial Court has rightly rejected the application holding that the plaintiffs want appointment of TILR for spot inspection of suit property in order to ascertain their possession over it. It is not the case of the plaintiffs that the defendants have encroached over the suit property. The real dispute between parties is about the declaration of ownership. The burden is on the plaintiffs to prove their possession over the suit property and the plaintiffs have filed application after ten years of filing of the suit. By appointing the TILR, the plaintiffs are trying to collect the evidence, which is not permissible in law.

6. The reasoning adopted by the learned trial Judge is correct. There is no illegality or perversity in the order impugned in the petition. Writ petition sans merit is dismissed. No costs.

(NITIN B. SURYAWANSHI)
JUDGE