

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

WRIT PETITION NO. 6075 OF 2021

Ramchandra s/o Namdeo Jadhav & Anr.

...Petitioners

Versus

Ashok s/o Bhanudas Mase & Ors.

...Respondents

.....
Shri. M. B. Kolpe, Advocate for the petitioners
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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 17TH, 2022

PER COURT : -

1. By the present petition, the petitioners/original plaintiffs, who had instituted Reg. Civil Suit No. 9/2019 for perpetual injunction and for demarcation of boundaries, seek to challenge the order passed below Exh. 14.

. In the suit filed by the plaintiffs, they filed an application seeking appointment of Court Commissioner to measure the land. The said application is made in the backdrop of the case of the plaintiffs that they have filed suit for demarcation boundaries and for perpetual injunction in respect of the suit land and the measurement of the land is to be carried out so as to give correct idea about the suit property before the Court.

2. Applying the settled position of law laid down as regards Order 26 Rule 9 of the Code of Civil Procedure, when a Commission can be made to conduct a local investigation, the learned Judge recorded that the plaintiffs have prayed for injunction simplicitor in the suit and it being a settled position of law that in a suit for simplicitor injunction, who is in possession, which property is in possession and the identification of the property is to be decided by the Court on the basis of the evidence brought before it either in the form of oral evidence or documentary evidence. The Court, therefore, record that this function cannot be delegated to a Court Commissioner.

. I am fully in agreement with the reasoning adopted by the learned Judge, the settled position of law being to the effect that the parties have to stand on their own pleadings and in order to be held entitled for the relief sought in the backdrop of the pleadings, it is open for a party to adduce such evidence as he deem necessary. However, the evidence cannot be collected through the Court Commissioner and the learned Judge has rightly appreciated the provision and the law which has been settled to that effect. Upholding the impugned order, the writ petition is dismissed.

[BHARATI H. DANGRE]
JUDGE