

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5089 OF 2019

Sagar Panjabrao Sabale & Ors.

PETITIONERS

VERSUS

Sunil Sarjerao Sabale & Ors.

RESPONDENTS

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Mr. Vishnu V. Patil, Advocate for the petitioners.

Mr. J.J. Patil for Respondents No. 1 and 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th JUNE, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Civil Judge, Junior Division, Bhokardan, below Exhibit-5 in Regular Civil Suit No. 174/2018.

2. The respondents No. 1 and 2 filed Regular Civil Suit No. 174/2018 against the petitioners and others seeking removal of encroachment and possession of the suit property. In the said suit application Exhibit-5 is moved seeking appointment of Taluka Inspector of Land Record (T.I.L.R.), Bhokardan as a Court Commissioner for measurement of the plaintiff's total land in Gut No. 14 situated at village Lingewadi, Taluka- Bhokardan, District-

Jalna with all other adjacent lands thereto, if necessary for carrying out effective measurement. Said application is allowed by the trial Court. Hence, the present petition.

3. Application Exhibit-5 preferred by respondents appears to be premature. It is filed at the initial stage before parties lead any evidence. It is further clear from the record that Regular Civil Suit No. 196/2018 is filed by the petitioners and others seeking partition of the ancestral property (which is also the suit property in Regular Civil Suit No. 174/2018). Said suit is also at initial stage. It is therefore clear that the property is yet to be partitioned and the trial Court has ignored all these relevant aspects while allowing application Exhibit-5.

4. In the light of above facts, application Exhibit-5 filed by the respondents is premature and should not have been allowed by the trial Court at this stage. The impugned order, therefore, is unsustainable and same is liable to be quashed and set aside and is accordingly quashed and set aside. Liberty is granted to the parties to move an application under Order 26 Rule 10 seeking appointment of Court Commissioner at subsequent stage after leading evidence. If such an application is

filed by either of the parties, the trial Court shall consider the same on its own merits, without being influenced by the observations in the order impugned in the present petition. With these observations, the writ petition is allowed and disposed of.

[NITIN B. SURYAWANSHI]
JUDGE