

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14801 OF 2021

BHAMABAI KARBHARI MULE THROUGH POWER OF ATTORNEY
HOLDER KARBHARI BABA MULE
VERSUS
ARUN VITTHAL MULE AND OTHERS

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Advocate for Petitioner : Mr. Rahul Karpe
Advocate for Respondents No 1 to 3: Mr. N.C. Garud

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORDER :

1. This petition challenges the order passed by the learned Joint Civil Judge, Junior Division, Karjat, below Exhibit-7 in Regular Civil Suit No. 206/2015, thereby allowing the application filed by the respondents/plaintiffs for appointment of court commissioner.

2. Respondents/plaintiffs have filed said suit seeking permanent injunction against the petitioner/defendant that they should not obstruct their peaceful possession of the suit property and they should not damage north-south bandh which is in between the land of plaintiffs and defendant. Said suit is resisted by the defendant by filing detail written statement. Application Exhibit-40 for temporary injunction is also filed by the plaintiffs,

so also application Exhibit-7 for appointment of court commissioner. Application Exhibit-40 is allowed by the Trial Court by order dated 17.08.2021, so also application Exhibit-7 for appointment of court commissioner by the even date. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for respondents. Perused the documents placed on record.

4. The learned advocate for the petitioner by placing reliance on the decision of co-ordinate bench of this Court in *Dnyandeo Vithal Salke and Others Vs. Dagdu Kadar Inamdar* (2017 (3) Mh.L.J. 314) submits that in a suit for simplicitor injunction it was improper on the part of Trial Court to appoint court commissioner. He therefore submits that the impugned order is liable to be quashed and set aside.

5. The learned advocate for the respondents on the other hand supports the impugned order. He submits that pursuant to the order impugned in the present petition, Taluka Inspector of Land Record (T.I.L.R.) has conducted measurements and submitted his report to the Trial Court. He

therefore submits that there is no substance in the petition and the petition may be dismissed.

6. The record indicates that plaintiffs and defendant have filed rough sketch maps in support of their respective contentions. Both these maps do not tally with each other. Defendant has disputed existence of the suit property and plaintiffs have *prima facie* established their possession over the suit property due to which temporary injunction is granted in their favour. In these peculiar facts, the Trial Court felt it necessary to appoint court commissioner, so as to ascertain the factual position of the suit property, which order cannot be faulted with.

7. If the Trial Court is of the opinion that appointment of court commissioner would assist it to resolve the controversy between the parties and to arrive at a just decision and set right the dispute, the Trial Court is justified in appointing the court commissioner. No prejudice is likely to be caused to the petitioner by appointment of court commissioner.

8. In *Dnyandeo Salke* (supra) in the facts of that case this Court has held that in a suit filed for simplicitor injunction it

was not proper on the part of Trial Court to appoint court commissioner, since original plaintiff could not establish prima facie case in his favour and could not show that which property was in his possession.

Such are not the facts of the present case and therefore, this authority would not help the petitioner.

9. No illegality or perversity found in the order impugned in the present petition. The writ petition being devoid of substance, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]