

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO.11527 OF 2022

SATYAWAN DAGDOBA WAGH
VERSUS
VITHAL BHIMRAO PAWAR AND ANOTHER

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Advocate for Petitioner : Mr Ajay Fulpagar h/f Mr P.R. Katneshwarkar
Advocate for Respondent No. 1 : Mr M.B. Kolpe h/f Mr V.B. Deshmukh

CORAM : SANDEEP V. MARNE, J.
DATE : 22nd NOVEMBER, 2022

PER COURT :

1. The petition is filed challenging the order dated 29.08.2022 passed by the Civil Judge, Senior Division, Osmanabad rejecting petitioner's application for appointment of Court Commissioner for site inspection.
2. Petitioner is original defendant No.1. Plaintiff has filed the suit for partition of the land claiming that the defendants have obtained N.A. permission and has demarcated the land by subdividing it to 27 plots.
3. On the other hand, it is a case of defendant No.1/petitioner that there is neither any N.A. permission nor any order demarcating the plots has been sanctioned. Thus, there appears to be dispute between the parties as to whether a lay out, demarcating the land on its plots has been sanctioned or not. This issue, in my opinion, cannot be decided by site inspection through Court Commissioner.

4. It is plaintiff's suit in which he alleges that the lay out plan demarcating the land into 27 plots has been sanctioned. The burden of proving this assertion rests upon the shoulders of the plaintiff. If the plaintiff is unable to show this by production of necessary evidence, it is the plaintiff, who will suffer. The defendant No. 1 wants appointment of Court Commissioner for site inspection to disprove that there is in fact, any such demarcation.

5. Even otherwise, whether lay out demarcating the lands into plots is sanctioned or not cannot be decided by site inspection through Court Commissioner. If there is any order sanctioning such lay out, that order would prevail and over the opinion of the Court Commissioner on physical inspection of the land.

6. The application filed by defendant No.1/petitioner was totally misconceived and has been rightly rejected by the trial court.

7. The petition is devoid of merits and the same is dismissed with no order as to costs.

[SANDEEP V. MARNE, J.]

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