

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13399 OF 2021

KAKASAHEB RAMBHAU NIKAM AND OTHERS
VERSUS
RAMBHAU VITHALRAO ZADBUKE DIED THR LRS RAJENDRA
RAMBHAU ZADBUKE AND OTHERS

...
Advocate for Petitioners : Mr. N.S. Tekale

....
[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 8th June, 2022

ORDER :

. The Trial Court has clamped injunction against the petitioners by order passed below Exh.5 in Regular Civil Suit No.371 of 2013. The said order is confirmed in the Misc. Civil Appeal No.3 of 2015. The injunction order is as follows:-

"The defendants are hereby temporarily restrained from doing any act which has an effect of causing obstruction to the peaceful possession of plaintiff over the suit plots and over the open space supposedly the marginal distance area situated between suit plots and Washi-Fata to Washi village road till the final decision of this suit."

2. The learned advocate for the petitioners strenuously urged that, the space which is claimed as marginal distance by the plaintiffs, in fact in the said place plots owned by the petitioners are situated. Under the garb of injunction granted by the Trial Court, the plaintiffs are now obstructing the construction of the defendants on their own plots. On a query, the learned advocate submits that, application filed by the petitioner for appointment of Court Commissioner and measurement of land filed earlier was rejected. The rejection order is not challenged so far. By pointing out the pleadings in the plaint, he submits that even the plaintiffs have averred that, it is necessary to appoint Court Commissioner.

3. Be that as it may, in the present matter the petitioners are not in a position to effectively demonstrate that, they are owners and possessors of the plots and their plot area is being claimed as marginal distance by the plaintiffs. In that view of the matter, it is not possible to interfere in the orders impugned in the present petition.

4. At later stage, after leading of evidence by both the parties in the Trial Court, they are at liberty to move application for appointment of Court Commissioner. Such application shall be considered by the Trial Court on merits, without being influenced by the order impugned in the present petition.

5. With these observations writ petition is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE