

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

WRIT PETITION NO.3121 OF 2023

**KERABAI W/O MANIK BENDAKE THROUGH POWER OF ATTORNEY
HOLDER RAJKUMAR MANIK BENDAKE**

VERSUS

PRABHAVATI W/O MANIK SURYAWANSHI AND ANOTHER

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Advocate for Petitioner : Mr. Amol G. Vasmatkar

AGP for Respondent – State : Mr. G.L. Deshpande

Advocate for Respondent No.1 : Mr. Gaurav L. Deshpande

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th MARCH, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 12/09/2022, passed by learned 3rd Joint Civil Judge, Senior Division, Latur, below Exhibit-104 in Regular Civil Suit No.518/2014, thereby rejecting application moved by the petitioner/plaintiff for issuing witness summons to Deputy Superintendent, Land Record Officer, Chakur.

2. Plaintiff filed suit for simplicitor injunction in respect of the suit land. The suit is resisted by the defendant by filing written statement. Plaintiff has led his evidence and closed it by filing pursis Exhibit-86, on 17/12/2021. Thereafter defendant No.1 has examined her witnesses. After examination of two witnesses by defendant No.1, present application is filed seeking permission to examine Deputy Superintendent, Land Record Officer, Chakur. The

same is rejected by the trial Court. Hence, the present petition.

3. Heard learned advocate for petitioner, learned Additional Government for State and learned advocate for respondent No.1. Perused the grounds raised in the petition, documents placed on record and the impugned order.

4. Learned advocate for petitioner strenuously submits that to decide real controversy between the parties, examination of said witness is essential.

5. Learned advocate for respondent No.1, on the other hand, opposes said prayer and supports the impugned order.

6. Admittedly, suit is filed by the plaintiff for perpetual injunction restraining defendants from disturbing her peaceful possession over the suit property and not for removal of encroachment. There does not appear any pleading of the plaintiff in respect of the contents in application Exhibit-104.

7. Trial Court has not felt it necessary to examine the witness proposed by the plaintiff to decide real controversy between the parties. On the contrary, trial Court has held that considering the nature of dispute, it is not necessary to issue witness summons to the said witness. Application is filed after evidence closure pursis is filed by the plaintiff and defendant examined two witnesses.

Examination of the said witness does not seem essential to decide the real controversy between the parties.

8. Trial Court has passed a reasoned order. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioner to exercise extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)