

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12196 OF 2021

Vaijnath Ganeshrao Deshmukh
and another

.... Petitioners

Versus

Vilas Laxmanrao Deshmukh
and others

.... Respondents

.....
Mr. V.P. Kadam, Advocate for the Petitioners
Mr. V.S. Kadam, Advocate for Respondent Nos.2, 3, 5 and 6-A
to 6-C

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th OCTOBER, 2023

ORDER :

1. Order passed by learned 2nd Joint Civil Judge, Senior Division, Parbhani, below Exhibit-17 in Regular Darkhast No.21 of 2021 is challenged in the present petition.

2. Learned advocate for the petitioner assailed the impugned order, contending that Executing Court has extended the scope of execution proceeding by passing the impugned order. No case is made out by the judgment debtors/original defendants to appoint Taluka Inspector of Land Records as Court Commissioner under Order XVI Rule 9 of the Code of Civil Procedure.

3. On the other hand, learned advocate for respondents/decree holders supported the impugned judgment.

4. Heard learned advocate for petitioners and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and impugned order.

5. It appears from the record that, there is a dispute of the boundaries. Admittedly, suit is decreed in respect of suit property described in the plaint, and Executing Court has held that, plaintiffs/decree holders need to be given protection to the extent of suit property, however, there is a dispute towards the boundary of northern side of suit property. Though it is admitted that towards northern side of suit property, there is no land of defendants, plaintiffs/decree holders will have no prejudice, if the land is demarcated, *inter alia*, from the northern side of the suit property, and decree holders are not concerned beyond his 80.94 R land. By appointing Court Commissioner, defendants are requesting to fix boundaries of suit property. If the boundaries of plaintiffs/decree holders 80.94 R land is fixed, their land will be demarcated and it will not cause prejudice to decree holders or judgment debtors.

6. According to the learned advocate for petitioners, by appointment of Court Commissioner, judgment debtors are trying to collect the evidence. The said argument is devoid of any merit as admitted position on record is that plaintiffs have claimed relief in respect of suit property and measurement of suit property is allowed by the impugned order.

7. Executing Court has passed a well reasoned order, and since no prejudice would be caused to plaintiffs/decreed holder, challenge raised in the present petition is devoid of any merit. The Writ Petition is therefore dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane