



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO. 9077 OF 2024

RAJABHAU RAGHUNATH DHUMAL
VERSUS
NAMDEO SANGAPPA TATTAPURE AND OTHERS

...
Advocate for the Petitioner : Mr. Kore Ganesh J.

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CORAM : ARUN R. PEDNEKER, J.

Dated : August 26, 2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The learned counsel for the petitioner submits that there is encroachment on the public road by the respondents/defendants as such the plaintiff/petitioner filed suit for perpetual injunction for restraining the defendants from causing obstruction to his enjoyment of the public road. The learned counsel submits that the petitioner filed application under Order XXVI Rule 9 of Civil Procedure Code for appointment of Court Commissioner to bring the actual position of the road on record. The learned counsel submits that the Trial Court dismissed the application filed for appointment of Court Commissioner and hence, the present writ petition is filed.
3. Perusal of the impugned order shows that the learned Trial Court has observed that the suit is filed for perpetual injunction and having regard to the nature of suit, plaintiff has to prove his case by adducing his own evidence and the appointment of Court Commissioner is not necessary. The learned Trial Court also observed that if the application at the instance of petitioner for appointment of Court Commissioner is allowed, it will amount to collection of evidence.

4. The learned counsel for the petitioner submits that petitioner's evidence is in process.

5. If there is encroachment over the public road, the petitioner can approach to the concerned authority for redressal of his grievance.

6. As regards the case of collection of evidence is concerned, if the parties desire, liberty is granted to both the parties to apply to the Court after the evidence is over for appointment of Court Commissioner and if such an application is filed the court shall decide the same in accordance with law.

7. With the above observations, the writ petition is disposed of accordingly.

(ARUN R. PEDNEKER, J.)

ssc/