

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5384 OF 2014

Jairam Bhanudas Narwade

..PETITIONER

VERSUS

Babasaheb Gajaba Narwade & ors.

..RESPONDENTS

Mr A.M. Nagarkar, Advocate for petitioner;

Mr D.R. Markad, Advocate holding for Mr N.K. Kakade, Advocate for
respondents no.1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 30th March, 2015

ORAL ORDER :

The petitioner/original plaintiff, who has instituted Regular Civil Suit 226 of 2011 for perpetual injunction, filed application Exh.44, under Order XXVI, Rule 9 of the Code of Civil Procedure, seeking appointment of Court Commissioner, at the stage of hearing on application Exh.5 for temporary injunction. The application Exh.44 came to be rejected by order dated 5th April, 2014, passed by Civil Judge Junior Division, Paithan. Thus, the present petition.

2. Learned Counsel appearing on behalf of the petitioner would urge that for effective adjudication of rights of the parties at interlocutory stage, it is necessary that this Court must allow the application for appointment of Court Commissioner, as according to him, the same shall not cause any

prejudice to the other side.

3. While countering the above referred submissions, learned Counsel appearing on behalf of respondents no.1 and 2 would urge that no provision is available for the petitioner to seek appointment of Court Commissioner at the stage of deciding interlocutory application Exh.5, for temporary injunction.

4. Having considered the contentions of the parties, it is admitted fact that the suit is at the stage of hearing on Exh.5. The provisions of Order XXVI, Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner, which are in the form of additional evidence, which is to be considered by the Court for adjudicating the real controversy between the parties on merit, are not available at that stage.

5. The principle that governs the decision on an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, i.e. grant of injunction, is to consider the evidence as is available on record.

6. In that view of the matter, in my opinion, no illegality could be noticed in the impugned order. Thus, the petition fails and stands rejected.

7. This Court has not expressed any opinion on merits of the matter.

8. It will be open for the petitioner to file application seeking appointment of Court Commissioner, at appropriate stage.

(N.W. SAMBRE, J.)

amj