

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO.945 OF 2015

IN

SECOND APPEAL NO.109 OF 2012.

(SHASHIKANT BABULAL KANHAI & OTH...VS..DR. LALCHAND DAGDULAL SOMANI)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Khandekar, Advocate for Appellants.
Shri R.M. Pande, Adv. h/f. Shri S.P. Bhandarkar, Adv. for Respondent.

CORAM : Z.A.HAQ, J.

DATED : NOVEMBER 17, 2015.

In this second appeal the dispute is about the ownership of the wall which stands between the properties of the appellants and the respondent. This application is filed by the respondent/ original defendant praying for permission to effect repairs to the wall.

Shri R.M. Pande, advocate holding for Shri S.P. Bhandarkar, advocate has submitted that the repairs are necessary to maintain the wall and to stop further deterioration of the wall due to percolation of the rain water. It is submitted that the respondent would be undertaking repairs on his own cost.

Shri S.S. Khandekar, advocate for the appellants submits that there are no bonafides on the part of the respondent. It is submitted that though the application came to be filed in June, 2015 the same has not been circulated for appropriate orders in spite of the fact that the entire rainy season is over.

Be that as it may, considering the facts on the record, in my view, interests of justice would be sub-served by passing the following order :

- i) The Joint Civil Judge Senior Division, Gondia shall appoint Commissioner and obtain report before the respondent undertakes repairs to the wall.
- ii) After the report is submitted by the Commissioner to the trial Court the respondent shall undertake the repairs of the wall within one month and file an affidavit along with the photograph before the trial Court.
- iii) The Commissioner appointed by the trial Court shall again inspect the spot and submit the report after the repairs are undertaken by the respondent.
- iv) The respondent shall undertake repairs at his own cost.
- v) The respondent shall also bear the expenses for execution of the Commission.
- vi) It is clarified that if any dispute arises between the parties, the same shall not be dealt with by the learned trial Judge and the parties should approach this Court.

The application is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE