

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

35 WRIT PETITION NO. 4149 OF 2016
WITH WP/4150/2016

RAVINDRA PANDURANG CHAUDHAR
VERSUS
TRIMBAK SHIVRAM BADE

Shri. B.S. Shinde, Advocate, holding for Shri. V.P.
Latange, Advocate, for petitioner.

CORAM: T.V. NALAWADE, J.

DATE : 16th AUGUST 2016

ORDER:

1) Writ Petition No.4149/2016 is filed to challenge the order made on Exhibit 46 in Regular Civil Suit No.462/2014 by the learned Civil Judge, Junior Division, Shevgaon, District Ahmednagar. Application was filed by the present petitioner, original defendant for appointment of Court Commissioner and the Court Commissioner was expected to ascertain as to in which field the pond is constructed and as to whether and how the pipeline is taken from the well towards the field. That is all matter of evidence and Court Commissioner cannot be appointed to collect evidence for a party. It appears that, relief of

temporary injunction is granted in favour of the plaintiff and the suit is fixed for giving evidence. In view of these circumstances, this Court holds that the trial Court has not committed any error in rejecting the application filed for appointment of Court Commissioner. The writ petition stands rejected.

2) Writ Petition No.4150/2016 is filed to challenge the order made on Exhibit 51 in Regular Civil Suit No.462/2014. Heard learned counsel for the petitioner, original defendant. The suit is filed for relief of injunction against the petitioner on the basis of sale deed executed by the defendant on 20-2-1984. In the year 2014, the defendant wanted to file counter claim for getting declaration that sale deed of the year 1984 is null and void. The trial Court has held that the suit is filed for injunction and so such counter claim cannot be entertained. The date of execution of sale deed and the execution of sale deed is not disputed. In support of his contention the learned counsel for the petitioner has placed reliance on a case reported as **AIR 1961 SC 808 (C. Mohammad Yunus v. Syed Unnissa)**. Facts and

circumstances of each and every case are always different. In view of the facts of the present case, the observations made in the reported case are of no use to the defendant.

3) In the result, Writ Petition No.4150/2016 stands dismissed. The observations made are for the purpose of present proceeding only.

Sd/-
(T.V. NALAWADE, J.)

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