

Writ Petition No.8786 of 2016

Versus

Natwarlal s/o Shivaji Patel
And Another. **.. Respondents.**

Shri. Vilas P. Savant, Advocate, for petitioner.

DATE : 25 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 164 in Regular Civil suit No.259/2010 which is pending in the Court of the Civil Judge Junior Division, Ashti, District Beed. Heard learned counsel for the petitioner.

2) The suit is filed by respondent No.1, Natwarlal for relief of injunction in respect of one agricultural land. It is the case of the plaintiff that during pendency of the

suit some portion which was owned by defendant No.1 was sold by him to defendant No.2 Mahesh. Due to this circumstance defendant No.2 came to be added in the suit. Defendant No.2 has filed written statement in the suit.

3) It is the case of the plaintiff in the application filed at Exhibit 164 that after purchasing the property defendant No.2 used force and on 26-6-2016 he made digging in the land for making construction by using JCB machine and he actually made some construction. It is the case of the plaintiff that he has made recording of this incident. Thus, according to plaintiff, the defendant No.2 made encroachment over suit property by making construction. In the application he applied for appointment of Court Commissioner. This application was opposed by defendant No.2 and after hearing both the sides, the trial Court has made appointment of Taluka Inspector of Land Records, Surveyor, as the Court Commissioner. He is expected to take measurement of the suit property of the plaintiff described in plaint paragraph 1 and he is expected to ascertain as to whether

encroachment is made in the property of the plaintiff by defendant No.2 by making any construction.

4) The learned counsel for the petitioner, original defendant No.2 submitted that by using the Court Commission the plaintiff is trying to collect evidence and so such order ought not to have been made by the trial Court. This submission is not at all acceptable. Relief of interim relief was refused when only defendant No.1 was on record. That does not mean that right was given to the other side to make encroachment. The plaintiff has filed suit for relief of perpetual injunction. There are now aforesaid specific allegations that during pendency of the suit, defendant No.2 has made some construction by making encroachment over the property of the plaintiff. There is sale deed in favour of the plaintiff of the suit portion and on that basis the measurement of the portion is to be done.

5) In view of these circumstances, this Court holds that the trial Court has not committed any error in making appointment of Court Commissioner. This Court is

avoiding making of further observations regarding the possibility of such incidents. This Court finds no merits in the proceeding. So, the petition is dismissed.

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

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