

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8450 OF 2012

Ambajogai Taluka Sahakari **Petitioner**
Kharedi-Vikri Sanstha Ltd.,
Ambejogai, Taluka Ambejogai,
District Beed

V E R S U S

Amrutrao Shankarrao Deshmukh **Respondent**

*Mr. K.S. Solanke, Advocate, holding for
Mr. B.A. Shinde, Advocate for the petitioner
Mr. S.K. Shinde, Advocate for the respondent*

CORAM : S.V.GANGAPURWALA, J.

DATE : 20th APRIL, 2017

PER COURT :

1. The order appointing Advocate as a Court Commissioner is assailed. The present respondent/plaintiff has filed the suit for injunction restraining the defendant/present petitioner from interfering in his possession in respect of the suit land. During the pendency of the suit i.e. Regular

Civil Suit No.80 of 2012, the plaintiff filed an application for appointment of the Court Commissioner to inspect the suit land and godown. The said application came to be allowed by the lower Court on 30th August, 2012.

2. Mr.S.K. Shinde, learned counsel for the respondent/plaintiff submits that the plaintiff as well as the defendant are claiming existence of godown in their respective lands. The condition of the godown is necessary to be brought on record. The appointment of the Court Commissioner would elucidate the matter in controversy and would assist the Court in arriving at a just conclusion.

3. The suit is simplicitor for injunction. It is not the case of the respondent/plaintiff that the expert shall be appointed as Court Commissioner. The plaintiff and defendant both claimed existence of godown in their respective lands. The appointment of the Court Commissioner would hardly serve any purpose.

The parties will have to prove their matter independently before the Trial Court.

4. The parties will have to adduce their evidence before the Trial Court, and thereafter only, the Court may consider the application for appointment of Court Commissioner if necessary and shall not be only for the purpose of collecting the evidence. In the result, I pass the following order:-

O R D E R

1. The impugned order passed below application (Exhibit No.24) in Regular Civil Suit No.80 of 2012 by the Joint Civil Judge, Junior Division, Parli Vaijnath is quashed and set aside.
2. The application (Exhibit No.24) in Regular Civil Suit No.80 of 2012 is rejected.

3. The parties shall adduce their evidence before the lower Court. After adducing the evidence by the parties before the Trial Court, if the Court feels appointment of the Court Commissioner necessary, then the parties, at that stage, may apply for the local inspection, which application would be considered by the lower Court on its own merits.
4. Writ Petition is accordingly allowed in above terms. No costs.

(S.V. GANGAPURWALA, J.)