

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13258 OF 2016

Plant Manager, Shree Renuka Sugars Limited,
Through Ajinkyatara Sahakari Sakhar Karkhana Ltd. ... Petitioner
Vs.
Vilas Shivajirao Umbare and others ... Respondents

Mr. Vaibhav A. Sugdare for Petitioner.
Mr. Manmath S. Athalye for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 01, 2017

P.C. :

Heard Mr. Sugdare, learned Counsel for petitioner and Mr. Athalye, learned Counsel for respondents No.1 and 2 at length. Rule. Mr. Athalye waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing. As respondents No.1 and 2, being the original plaintiffs, are the only contesting respondents, notice on respondent No.3 is dispensed with.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 27.11.2015 passed by the learned 7th Joint Civil Judge, Junior Division, Satara below exhibit-40 in Regular Civil Suit No.792 of 2012. By that order, the learned trial Judge allowed the application made by respondents No.1 and 2, hereinafter referred to as 'plaintiffs', for appointment of Court Commissioner under Sections 75, 151, Order 26, Order 29 and Rules 9 and 10 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') The learned trial Judge appointed Taluka Inspector of Land Records (T.I.L.R.), Satara as a Court

Commissioner to carry out the measurement of Gat No.263/1 and 264 situate at Village Shendre, Taluka District Satara with direction to ascertain the distance between stone mine of plaintiffs situate in Gat No.263/1 and electric pole erected by defendant No.2 in Gat No.264. Commissioner is directed to prepare accurate map of the measurement and submit his report along with the map within 30 days after receipt of the writ of the Court subject to the plaintiffs depositing expenses incurred for commission work (i.e. Commission Fee).

3. In support of this Petition, Mr. Sugdare submitted that plaintiffs have instituted Suit inter alia praying for perpetual injunction restraining defendants from erecting electric pole/s within 200 yards i.e. 182.88 mtrs. from the stone mine situate in Gat No.263/1, more particularly described in paragraph 1A of the plaint as also restraining defendants from causing obstruction in excavating from the stone mine situate in Gat No.263/1. He submitted that defendants have filed written statement resisting the Suit inter alia contending that the electric pole/s are beyond 200 yards from stone mine situate in Gat No.263/1. Plaintiffs have closed their evidence. The plaintiffs have belatedly filed application exhibit-40 for appointment of Court Commissioner. He submitted that having regard to the prayers made in the Suit as also the fact that plaintiffs have already closed their evidence, the application is made with a view to collecting evidence through the Court machinery. He submitted that in the facts and circumstances of the present case, it is absolutely not necessary to appoint the Court Commissioner.

4. On the other hand, Mr. Athalye supported the impugned order. He submitted that in the written statement, defendants have contended that the electric pole/s is beyond 200 yards from stone mine in Gat No.263/1. The controversy between the parties is very narrow in the sense whether

electric pole is erected within 200 yards from the stone mine or not and for that purpose, it is necessary to appoint T.I.L.R., who is the independent authority to carry out the measurement and submit report. No prejudice will be caused to the defendants in case T.I.L.R. is appointed and it will help resolving the entire controversy. In any case, plaintiffs can always carry out private measurement and examine that person as a witness. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, Suit is for perpetual injunction restraining the defendants from erecting electric pole within 200 yards from stone mine situate in Gat No.263/1. On one hand, plaintiffs are claiming injunction to this effect against the defendants and on the other, defendants have contended that electric pole/s is erected beyond 200 yards. In my opinion, for that purpose, it is not necessary to appoint Court Commissioner, more so when plaintiffs have belatedly filed the present application. The learned trial Judge was, therefore, not justified in allowing the application. Parties can adduce evidence in support of their respective case without the aid of the Court Commissioner. Understood thus, the impugned order cannot be sustained and as such, is liable to be set aside. Hence, Petition succeeds. Impugned order is set aside. Application exhibit-40 made by the plaintiffs is dismissed. Rule is made absolute in the aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)