

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 778 OF 2018

ABHAY RAMCHANDRA NAIK GANTHE., ... Petitioner

Versus

JAYMALA @ MITILA MAHESH NAIK., ... Respondent

Shri Rohit Bras De Sa and Ms. V. Shet, Advocate for the
Petitioner.

Shri Arjun F. Naik, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 25th January 2019

P.C.

This petition can be disposed off on a short point. The petitioner is the original plaintiff who is challenging the order dated 07.06.2018 by which an application, exhibit 44, for appointment of Commissioner has been dismissed by the Trial Court.

2. The petitioner has filed a suit for removal of encroachment and injunction in respect of the property bearing survey no.22/5. According to the petitioner, the defendant and her family members had made an attempt to trespass into the property on 01.04.2018 and 02.04.2018 and had cleared a portion of the property by uprooting trees and removal of stones. It was also contended that the family members of the plaintiff were

assaulted.

3. It is a matter of record that the petitioner has obtained an order of temporary injunction against the respondents which has been confirmed in appeal.

4. According to the petitioner, the respondent has committed breach of the order of injunction in respect of which an application is filed before the Trial Court and which is said to be pending.

5. The petitioner filed an application on 07.04.2018 for deputing the Bailiff of the Court to be appointed as a Court Commissioner to visit the site and report the illegalities and obtain photographs of the alleged illegalities in the presence of the Commissioner.

6. That application was opposed on behalf of the respondent, inter alia, on the ground that by the said application, the petitioner is trying to collect evidence.

7. The learned Trial Court by the impugned Order has dismissed the application by holding that there is an attempt by the petitioner to collect evidence.

8. On hearing the learned Counsel for the parties, I do not find that any case for interference is made out in the impugned order. Admittedly, an application for taking action for breach of injunction is filed by the petitioner which is pending before the Trial Court. There are allegations and counter allegations made at this stage as to whether the respondent has committed a breach of the injunction order which matter can only be decided after the parties lead evidence. After the petitioner leads evidence, it would be open to the Trial Court to consider whether a Commissioner needs to be appointed in terms of Order 26 Rule 9 of the Civil Procedure Code.

9. Reserving a liberty to the petitioner to file such an application, no interference at this stage is necessary. If such an application is filed, the Trial Court shall decide the same on its own merits and in accordance with law, uninfluenced by the observations in the impugned order.

10. The petition is disposed off in the aforesaid terms with no orders as to costs.

C. V. BHADANG, J.