

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 614 OF 2019

MADHAVI MAHABALESHWAR PEDNEKAR AND
3 ORS., ... Petitioners

Versus

SUSHILA TULSHIDAS PEDNEKAR AND 22
ORS., ... Respondents

Mr. Shirin V. Naik, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 18th July 2019

P.C.

Heard Mr. Naik, the learned Counsel for the petitioners.

2. The challenge in this petition is to the order dated 11.06.2019 passed by the learned Trial Court refusing to appoint a Commissioner under Order XXVI Rule 9 of Civil Procedure Code.

3. The case made out by the petitioners/plaintiffs is that the Trial Court had passed an order directing the defendant nos.10, 12 and 14 to maintain status quo. However, in breach thereof, the said defendants have made certain construction. In view of these subsequent events, the petitioners filed an application for amendment of the plaint on 13.06.2016 and the amendment has been consequently allowed and carried out. At this stage, the

petitioners filed an application for appointment of Commissioner to inspect the site to verify whether there is any construction in the newly conveyed plot nos. D, D-1, E, F and G surveyed under no.27/1-E of Village Arpora.

4. The learned Trial Court has dismissed the application on the ground that by seeking appointment of the Commissioner, the party cannot collect evidence. The Trial Court has observed that the petitioners have their own remedy if the order of status quo has been disobeyed.

5. On hearing the learned Counsel for the petitioners, I do not find that the impugned order suffers from any jurisdictional error. The learned Counsel for the petitioners has placed reliance on the decision of the Supreme Court in the case of **RAJINDER & CO. VS. UNION OF INDIA & ORS.** (2000) 6 SCC 506. The said case, in my considered view, turned on its own facts. In the said case, the Trial Court had appointed a Commissioner which order was set aside by the High Court. The Supreme Court found that the question whether the Commissioner's report is acceptable or not will be decided by the trial Court.

6. In the present case, the suit is not even ripe for hearing. The petitioner has also not filed any application for breach of the order of status quo.

7. I have gone through the impugned order and no case for appointment of Commissioner is made out at this stage. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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