

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2588/2013

Ishwar Krishna Yadav

... Petitioner

V/s.

Grampanchayat Malwadi

... Respondent

Ms. Manisha Prajapati I/b. S. V. Sadavarte for the Petitioner

CORAM: K.K. TATED, J.

DATED : JANUARY 8, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 22.12.2011 passed by the Jt. Civil Judge, Junior Division, Baramati below Exhibit- 24 in Regular Civil Suit No. 223/2010 rejecting the Plaintiff's Application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner.

2 It is to be noted that at the time of passing the impugned order dated 22.12.2011, the Trial Court has specifically recorded that the Defendant has no objection to appoint the court commissioner because he was not concerned with the subject matter of the suit property itself.

3 By filing Regular Civil Suit No. 223/2010 the Petitioner is claiming permanent injunction against the Respondent -

Defendant from carrying out any construction activity on a particular plot of land. It is specifically stated in the order that the Defendant is not concerned with the said construction activity. Said construction activity is undertaken by Raje Shiv Chhatrapati Pratisthan who is not a party in the present proceedings. Considering these facts, the Trial Court has rejected the Petitioner's Application for appointment of court commissioner though the Defendant has given their no objection on 27.09.2011.

4 The learned counsel for the Petitioner submits that the Trial Court has erred in coming to the conclusion that the Petitioner has failed to make out any case for appointment of court commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908. He submits that even the Defendant has given no objection and filed joint pursis for appointment of court commissioner on 27.09.2011 (Page 24 of the petition), in spite of that Trial Court has rejected their Application. Hence, the Writ Petition be allowed appointing the court commissioner to visit the suit property and submit a report.

5 It is to be noted that as stated hereinabove, the Defendants are not concerned with the subject matter of the suit property. In the present proceedings, the Petitioner is claiming permanent injunction restraining the Defendant from carrying out any construction activity which is undertaken by Raje Shiv Chhatrapati Pratisthan who is not a party in the present proceedings. In view of these facts, I do not find any error in the

well reasoned order dated 22.12.2011 passed by the Trial Court below Exhibit- 24 in Regular Civil Suit No. 223/2010.

6 Hence, following order is passed

- a. The Writ Petition stands dismissed with costs.
- b. The Petitioner to pay cost of Rs.5000/-.
- c. Cost shall be paid to the Kirtikar Law Library, High Court, Bombay on or before 31.01.2019 and place a receipt thereof on record before the learned Trial Court in Regular Civil Suit No. 223/2010, failing which the said suit shall stand dismissed without further reference to the court.

(K. K. TATED, J.)