

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3523 OF 2019

Vidya Narendra Jadhav & Anr.	...Petitioners
vs.	
Bhupendra Tapidas Dodhiawala & Anr.	...Respondents

**WITH
WRIT PETITION (ST) NO. 8594 OF 2019**

Dr.Bhupendra Tapidas Dodhiawala & Anr.	...Petitioners
vs.	
Smt.Vidya Narendra Jadhav & Anr.	...Respondents

Mr.Ish Jain with Kiran Jain and Rajan Yadav I/b. Kiran Jain & Co. for
Petitioners in WP 3523/2019 and for Respondents in WPST 8594/2019.
Mr.Jaydeep Deo for Respondents in WP 3523/2019 and for Petitioners in
WPST 8594/2019.

CORAM : S.C. GUPTE, J.

DATE : 27 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 These two writ petitions challenge the same order, though on different aspects of the order. The controversy concerns appointment of a Commissioner and injunction prayed by the Petitioners in the companion petition, namely, Writ Petition (Stamp) No.8594/2019. The first appellate court, whose order is the subject matter of challenge in the present writ petitions, accepted the prayer for appointment of a Commissioner (the purpose of the prayer being to enable the court to pass suitable order on the injunction application), whilst at the same time rejecting interim injunction application of the Defendants. The impugned order, so far as it appoints a Commissioner to inspect the site, has been challenged by the Petitioners in Writ Petition

No.3523/2019 (original Plaintiffs), whilst the order rejecting the injunction application has been challenged by the Petitioners in Writ Petition (Stamp) No.8594/2019 (original Defendants).

3 After the matter is heard at some length, it is agreed between learned Counsel for the parties that the order of appointment of Commissioner may be sustained but with a clarification that the Commissioner is not expected to reflect on or ascribe the responsibility of the parties for the state of affairs existing at site. It is also agreed that after the Commissioner's report is submitted to the first appellate court, the appeal in respect of the injunction application of the Defendants will be considered on its merits. It is agreed that all rights and contentions of the parties on merits including the entitlement of the Defendants to apply for an injunctive relief in the Plaintiffs' suit may be kept open. It is ordered accordingly.

4 The Commissioner shall carry out site inspection and prepare his report. The report should restrict itself to the factum as well as the cause of obstruction, if any, to the drainage line of the Defendants. The mandate of the Commissioner does not include finding out or ascribing the responsibility, if any, of the parties or either of them for the existing state of affairs at site. The order of the Commissioner shall otherwise abide by the order passed by the appeal court. After the Commissioner's report is submitted to the court, the court shall hear the Defendants' appeal from refusal to grant the interlocutory injunction prayed for. All rights and contentions of the parties on merits in that behalf are kept open. It will be open to the Plaintiffs to contend in that appeal that no injunctive relief could be granted to the Defendants in the Plaintiffs' suit.

5 Both writ petitions are disposed of accordingly.

(S.C. GUPTE, J.)