

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.1432 OF 2005

Ram s/o Dashrath Ingle
Age 69 years, Occu. Agri.
R/o village Mirwat, Tq. Parli Vajinath,
Dist. Beed.
Through its power of attorney
Karbhari S/o Rambhau Ingle
Age 38 years, Occu. Agri.
R/o Village Mirwat, Tq. Parli,
Dist. Beed.

versus

1. Kundlik s/o Shripati Kasbe
age 46 years, Occu. Agriculture
r/o Mirwat, Tq. Parli Vajinath,
Dist. Beed.
2. Minhajoddin s/o Mohammad Gaus (Mulani),
age 51 year, Occu. Agri.
R/o Mulla Galli, Islampur Bangala,
Parli Vajinath, Tq. Parli Vajinath,
Dist. Beed.

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Advocate for Petitioner : Mr. Anuj Fulfagar h/f Mr. P. R. Katneshwarkar
Advocate for Respondent No.2 : Mr. S. V. Warad
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CORAM : V. K. JADHAV, J.
DATED : 13th MARCH, 2020

ORAL JUDGMENT :-

1. Heard both sides.
2. The petitioner is the original plaintiff. The petitioner has instituted the suit bearing Regular Civil Suit No. 78 of 2004 simplicitor for a decree of perpetual injunction. In the pending suit, the respondent-original defendant No.2 filed an application Exh.59 for appointment of Court Commissioner. The petitioner-plaintiff strongly resisted the said

application. The trial court, by the impugned order dated 24.9.2004 below Exh.59 in R.C.S. No. 78 of 2004, allowed the said application. Hence, this writ petition.

3. Learned counsel for the petitioner-plaintiff submits that in the suit simplicitor for perpetual injunction, the respondent-original defendant No.2 unnecessarily filed the application for appointment of Court Commissioner. In the suit simplicitor for a decree of perpetual injunction, it is for the trial court to find out whether the petitioner-plaintiff is in lawful possession of the suit property or not and those powers cannot be delegated to the Commissioner. Learned counsel submits that the order impugned is thus liable to be quashed and set aside.

4. Learned counsel for the respondent-defendant no.2 submits that though the suit has been instituted simplicitor for a decree of perpetual injunction, in fact, it is a dispute regarding boundaries. Learned counsel submits that the boundaries to the suit land have not been correctly shown by the petitioner-plaintiff and there is also a dispute about existence of the well. It was therefore, necessary to measure the suit land and to find out the exact situation of the well in the suit land through the T.I.L.R. The trial court has, therefore, rightly allowed the application Exh.59. The impugned order came to be passed way back in the year 2004. There is no point to unsettle the said order after such a long gap. The writ petition may be dismissed.

5. It appears that in a suit simplicitor for a decree of perpetual injunction, there was no reason for the respondent-defendant No.2 to file an application for appointment of Court Commissioner. Even if the boundaries are shown incorrectly, and if the location of the well is not correctly shown, the petitioner-plaintiff would fail in his suit. In a suit simplicitor for a decree of perpetual injunction, it is for the court to consider the lawful possession of the plaintiff over the suit land. It thus appears that the trial court has exceeded the powers and allowed the application Exh.59. It further appears that though this Court has not granted stay to the execution of the order passed below Exh.59, the suit is still pending. The trial court could have disposed of the suit. In view of the same, it is now necessary to give directions to the trial court to dispose of the suit in expeditious manner. Hence, I proceed to pass the following order:-

ORDER

- I. Writ petition hereby allowed.
- II. The impugned order dated 24.9.2004 passed below Exh.59 in R.C.S. No. 78 of 2004 is hereby quashed and set aside.
- III. The application Exh.59 is hereby rejected.
- IV. The Trial Court shall dispose of the suit as expeditiously as possible, preferably within a period of one year from today.
- V. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)