

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10956 OF 2017

DIGAMBAR GANPATI SONAWANE
VERSUS
BHAGWAN VITTHAL TAMBE

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Advocate for Petitioner : Mr. Bora Satyajit S.
Advocate for Respondent: Mr. V R Langhe h/f P V Langhe

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CORAM : V.K. JADHAV, J.
Dated : March 03, 2020

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PER COURT :-

1. By consent of the parties heard finally at admission stage.

2. The petitioner is the original plaintiff instituted the suit bearing R.C.S. No.133 of 2013 simplicitor for perpetual injunction. Pending the suit, the respondent/defendant has filed an application Exh.45 for appointment of the Court Commissioner. By impugned order dated 28.4.2017 below Exh.45 the Trial Court has allowed the said application. Hence, this writ petition.

3. Learned counsel for the petitioner/original
aaa/-

plaintiff submits that in a suit simplicitor for perpetual injunction instituted by the petitioner/plaintiff on the basis of the application filed by the respondent /defendant, the Civil Court cannot delegate the powers to the Court Commissioner to find out as to whether plaintiff is in lawful possession of the suit property. Impugned order is thus liable to be quashed and set aside.

4. Learned counsel for respondent/defendant submits that the respondent/defendant has instituted another suit in respect of the suit property, wherein location of the well is in dispute. Thus, considering the same, the Trial Court has allowed the application for appointment of the Court Commissioner with the observations that with the help of the report submitted by the Court Commissioner the dispute between the parties can be redressed. Learned counsel submits that, pending this writ petition the order passed by the Trial Court has been implemented and the Court Commissioner so appointed has also submitted the report. Learned counsel thus submits that no

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interference is required at this stage. Writ Petition is liable to be dismissed.

5. In a suit simplicitor for perpetual injunction instituted by petitioner/plaintiff, respondent/defendant has filed an application Exh.45 for appointment of the court Commissioner. It is well settled that in a suit simplicitor for perpetual injunction, it is for the Court to find out as to whether the plaintiff is in lawful possession of the suit property or not and those powers cannot be delegated to the Court Commissioner. If at all another suit instituted almost in respect of the same cause of action, the respondent/defendant is at liberty to file an application in his suit for appointment of the Court Commissioner, if so required. Otherwise, the impugned order is not sustainable and the same is liable to be quashed and set aside. Hence, I proceed to pass the following order.

ORDER

I. Writ Petition is hereby allowed.

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II. The impugned order dated 28.4.2017 passed by the learned Civil Judge, Junior Division, Patoda, District Beed below Exh.45 in Regular Civil Suit No.133 of 2013 is hereby quashed and set aside.

iii] The application Exh.45 in R.C.S. No.133 of 2013 is hereby rejected.

iv] Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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