

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 WRIT PETITION NO.2951 OF 2021

HYDERABAD MACHINERY COMPANY THR ITS PROPRIETOR PURVA
AVINASH PHADKE THR HER GPA
VERSUS
SHIVAJI B DEVENDRA SING

.....
Advocate for Petitioner : Mr. R.S. Deshmukh, senior counsel i/b Mr. D.R.
Deshmukh
.....

CORAM : V. K. JADHAV, J.
DATED : 22nd FEBRUARY, 2021

PER COURT:-

1. The petitioner is original plaintiff. The petitioner has instituted the suit bearing R.C.S. No. 138 of 2019 simplicitor for decree of perpetual injunction. In the pending suit, the petitioner has filed an application Exh.36 for appointment of court commissioner. By impugned order, the trial court has rejected the same.

2. Learned senior counsel Mr. Deshmukh, submits that the trial court has rejected the application Exh.36 without giving of opportunity of being heard to the petitioner. Learned senior counsel submits that even the possession of the petitioner-plaintiff over the disputed shop is not disputed by the other side and even the respondent-defendant has filed counter claim wherein the relief of recovery of suit shop is sought. Learned senior counsel submits that in view of the same, there was no hurdle, as such, to grant application Exh.36 seeking appointment of Court Commissioner.

3. The trial court initially recorded the absence of counsel representing the petitioner-plaintiff and posted the application for hearing on the next date. Though I find that the trial court due to outbreak of COVID-19 pandemic situation has passed the impugned order, however, I do not find any fault in the order passed by the trial court below Exh.36. It is simplicitor suit for perpetual injunction wherein the petitioner has filed an application Exh.36 for appointment of senior advocate of the Bar to inspect the shop and prepare a list of articles lying in the shop. In the suit simplicitor for decree of perpetual injunction, usually the aspect of legal possession over the suit property is required to be considered. In the instant case, I do not understand as to what is the propriety in preparing the list of articles lying in the disputed shop. In view of the same, I find no error in the order passed by the trial court. There is no substance in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

rlj/