

RAJSHREE
KISHOR
MORE

Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2021.09.13
17:45:54
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION WRIT PETITION NO.6830 OF 2018

Ravindra Pandit Muthal	]	..	Petitioner
V/s.			
Maruti Ranjit Muthal (Deceased)	]		
Through his legal heirs & Ors.	]	..	Respondents

Mr.Bhushan Walimbe i/b P.G. Sarda, for Petitioner.
Mr.Prasad Pradeep Kulkarni, for Respondents.

CORAM : N.R.BORKAR, J.

DATED : 7TH SEPTEMBER 2021.

P.C.:

1] This Writ Petition takes an exception to the Judgment and order dated 27.11.2017 passed by the learned Ad-hoc District Judge, Barshi, in Miscellaneous Civil Appeal No.5/2017.

2] The respondent, in a suit filed by him, has sought injunction. According to the respondent, the petitioner/defendant is not allowing him to pluck Tamarinds from three Tamarind trees, which came to be allotted to his share in partition.

3] The respondent filed an application for temporary injunction. The trial Court rejected the application filed by the respondent by order dated

21.03.2017. In an appeal filed by the respondent, the Appellate Court reversed the order of the trial Court and allowed the application filed by him for temporary injunction.

4] The learned counsel for the Petitioner submits that according to the respondent out of the said three trees, one tree is on western side of his land; whereas according to the petitioner all three trees allotted to the share of respondent are on eastern side of his land. It is submitted that considering this dispute the trial court while rejecting the application has observed that, there is no convincing material on record to show that out of three Tamarind trees, one tree is there on the western side land of the respondent. It is submitted that the respondent, thus sought appointment of Court Commissioner to ascertain the exact location of all three trees before the appellate court. It is submitted that the learned appellate court without appointing Court Commissioner and calling his report allowed the appeal by un-reasoned order.

5] During the course of arguments, learned counsel for respondent submitted that the respondent No.2 has already moved an application before the trial court for appointment of Court Commissioner and the trial court has allowed it.

6] However, according to the learned counsel for the Petitioner, the respondents have not deposited necessary fee of Court Commissioner.

7] Learned counsel for respondents submits that the respondents will deposit the necessary fee of Court Commissioner within a period of one month from today.

8] I have perused the order of appellate court. The appellate court has observed that the respondent has made out the *prima facie* case, but has not assigned any reasons to that effect. I would have, thus remanded the matter back to the trial court, but considering the short issue involved in the suit, the following order is passed :

- i] Writ Petition is allowed.
- ii] The order of the appellate court dated 27.11.2017 is set aside.
- iii] The trial court is directed to decide the suit in question as expeditiously as possible and in any case within a period of one year from today.
- iv] Till the disposal of the suit, the parties are directed to maintain *status-quo*.

v] Needless to mention that parties shall co-operate with the trial court and shall not seek unnecessary adjournments.

vi] The trial Court to decide the suit on its own merits, without being influenced by the order of Appellate Court or this Court.

[N.R.BORKAR,J.]