

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2370 OF 2023

Jagannath Madanrao Sonmale Petitioner

Versus

Babasaheb Bhagwatrao Jaibhai Respondent

.....
Mr. S.G. Dhumak, Advocate for the Petitioner

Mr. B.K.Patil, Advocate for the Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JULY, 2023

ORDER :

1. The petitioner/defendant is aggrieved by the order passed by the 4th Joint Civil Judge, Junior Division, Beed, below Exhibit-36 in Special Civil Suit No.03 of 2021, thereby allowing the application filed by the respondent/plaintiff for appointment of Court Commissioner.

2. Admittedly, the suit is filed by the respondent/plaintiff for removal of encroachment and injunction with other reliefs. The suit is at the stage of evidence. The respondent/plaintiff has examined himself and his one witness. At this stage, Application Exhibit-36 is filed for appointment of Court Commissioner, which is allowed by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, and the impugned order.

4. Learned advocate for the petitioner submits that the application is filed at premature stage and the same ought not to have been allowed by the Trial Court. The application could have been entertained only after the conclusion of recording of evidence.

5. It is not in dispute that the suit is for removal of encroachment and injunction, in which the plaintiff has examined himself and his one witness. The Trial Court while allowing the Application Exhibit-36, has held that the facts in the suit cannot be proved by mere ocular evidence and significance of oath and affidavit is of lesser value. Expert can be appointed, when documents and affidavits on record, create a disputed picture and Court needs a report from an expert for resolution of the controversy. Considering these aspects, the Trial Court felt it necessary to appoint the Court Commissioner as it was of the view that it does not amount to creation of evidence.

6. Learned advocate for the petitioner relied on the order passed by this Court in Writ Petition No.9973 of 2021, wherein it is held that, in cases of suit for removal of encroachment or recovery of possession, it is desirable to appoint Court Commissioner. But, since the application in that case for appointment of Court Commissioner was filed at premature stage, this Court declined to interfere in the order, thereby rejecting the prayer for appointment of Court

Commissioner, impugned in that petition For the reasons stated in this order, this decision is not applicable to the facts of the present case.

7. The Trial Court has passed a well reasoned order in consonance with the settled legal position and the application is allowed so as to bring the actual position on site before the Court. Appointment of Court Commissioner would enable the Trial Court to effectively decide the dispute between the parties. In that view of the matter, no illegality or perversity is found in the order impugned in the present petition. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane