



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

934 WRIT PETITION NO. 3131 OF 2023

**SUNITA KANTRAO KANDHARKAR
VERSUS
VIVEK ALIAS DEVIKANT PATANGE & ANOTHER**

...
Advocate for the petitioner : Adv.D.M.Shinde
Advocate for Respondent nos. 1 and 2 : Adv.S.S.Dargad
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 17.04.2024

P.C. :

1] Heard the learned counsel for the parties.

2] By way of present Writ Petition, the petitioner is challenging the impugned judgment and order dated 31.01.2023 passed by the Civil Judge Junior Division, Kalamnuri, District Hingoli below Exh.19 in RCS No.97/2022 whereby the application for appointment of Court Commissioner is allowed.

3] The learned counsel for the petitioner submits that in the year 2022, the petitioner filed RCS No.97/2022

for perpetual injunction in respect of the suit property bearing Grampanchayat Property No. 680/2. Thereafter, the respondents – defendants filed written statement and resisted the suit. On 29.08.2022, the petitioner filed an application below Exh. 5 in RCS No. 97/2022 and sought temporary injunction against the defendants and the same is allowed on 29.08.2022. On 06.09.2022, the defendant no.1 filed an application under Section XXVI Rule 9 of Code of Civil Procedure and the same is allowed by the trial Court on 31.01.2023. The learned counsel for the petitioner further submits that the petitioner objects the impugned order on the ground that it would amount to collection of evidence as the suit is at the preliminary stage. The evidence of the some of the parties is yet to commence. The suit is filed simplicitor for injunction. The learned counsel further submits that the impugned order may be quashed and set aside and the suit can also be disposed within stipulated period.

4] The defendants contend that in the event the order appointing Court Commissioner is set aside liberty be

reserved to move application for appointment of Court Commissioner at the appropriate stage. In view of the same, the impugned order dated 31.01.2023 passed by the Civil Judge Junior Division, Kalamnuri, Dist. Hingoli below Exh.19 in RCS No.97/2022 is set aside.

5] Liberty is granted to the defendants to move the application for appointment of Court Commissioner after completion of the evidence of defendants. If such application is filed by the defendants, the trial Court is directed to decide the same in accordance with law.

6] The trial Court is also directed to decide the Regular Civil Suit No.97/2022 within a period of two year from the date of production of this order. The parties to co-operate with the trial Court in deciding the said suit.

7] With the above observations, the present Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE