

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6855 OF 2022

Kanu Dadarao Sudame (since deceased) through
legal heirs Parasu Kanu Sudame .. Petitioner

Versus

Bhaurao Bhalbhim Sudame and Ors. .. Respondents

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- Mr. Sujeet Bugade, Advocate for Petitioner.
- Mr. D. S. Mhaispurkar, Advocate for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Bugade, learned Advocate for Petitioner and Mr. Mhaispurkar, learned Advocate for Respondents.
- 3.** Perused the praecipe dated 26.06.2024 and the Writ Petition.
- 4.** The present proceedings challenges rejection of Application filed below Exhibit-160 in Special Civil Suit No.40 of 2012 for appointment of Court Commissioner filed by Plaintiff in suit proceedings. The suit is filed in the year 2012 namely Special Civil Suit No.40 of 2012. Plaintiff has filed the suit seeking recovery of compensation received by Defendants in respect of acquisition of a portion of land which the Plaintiff claims to have been acquired for a

road from the property belonging to the Plaintiff.

5. **PER CONTRA**, Mr. Mhaispurkar would refute the claim of the Plaintiff and would submit that acquisition of the portion of land for road has taken place from the land holding belonging to Defendants and Defendants have rightfully received the compensation for the same. Plaintiff has led evidence of five witnesses in witness action in support of his case uptill now and I am informed by both learned Advocates that witness action of Defendants is underway at present. At this stage, an Application comes to be filed by Plaintiff seeking appointment of Court Commissioner in order to identify the suit land which was acquired for road and its location to determine from which property the said land was acquired. It is Plaintiff's contention that said land was acquired from Plaintiff's property whereas Defendants disagrees with the claim of Plaintiff. That Application for appointment of Court Commissioner during the course of trial stands rejected by the impugned order dated 09.02.2022. Hence the present Petition.

6. I have heard the learned Advocates appearing for the respective parties and perused the pleadings and the impugned order. I am *prima facie* of the opinion that during the course of trial allowing such an Application would be detrimental to the evidence that has already been led and that would be led by Defendants in rebuttal and

also may amount to gathering of further evidence.

7. In that view of the matter, I am not inclined to interfere with the impugned order dated 09.02.2022 passed by the learned Trial Court below Exhibit-160 in Special Civil Suit No.40 of 2012. Needless to state that after the evidence in rebuttal of Defendants is concluded, it shall be open to the learned Trial Court, after analysing the strength of the evidence of both the parties to appoint Court Commissioner, if learned Trial Court feels it necessary and / or if it is not in position to identify the land which has been acquired and / or from which property, the said land has been acquired for road. Apart from the discretion left to the Trial Court, it shall also be open for both parties to prefer Application seeking appointment of Court Commissioner with valid reasons to be stated in that Application before learned Trial Court on the basis of the strength of the evidence led by the parties. If such an Application is filed after completion of evidence in rebuttal of Defendants, the same shall be decided strictly in accordance with law and on its own merits. It shall solely be the discretion of the learned Trial Court whether to allow such Application or otherwise.

8. With the above directions while sustaining the impugned order, the Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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