

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7943 OF 2023

Surendra Bhagwan Shitole and Anr.

.. Petitioners

Versus

Shri Natha Bapurao Gaikwad and Ors.

.. Respondents

-
- Mr. Laxman Kalel, Advocate for Petitioners.
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 11, 2024.

P.C.:

- 1.** Heard Mr. Kalel, learned Advocate for Petitioners.
- 2.** The impugned order dated 01.04.2023 passed in Application below Exhibit “08” rejects the Application for appointment of Court Commissioner made by the Plaintiff under Order XXVI Rule 14 of the Code of Civil Procedure, 1908.
- 3.** Admittedly Suit is filed by the Plaintiff for demarcation of boundaries, injunction and removal of encroachment. In such a Suit proceedings on the basis of the case of the Plaintiff, the Plaintiff is required to lead affirmative evidence, rather than make an Application at the outset for appointment of Court Commissioner which would determine the reliefs prayed for in the Suit plaint without the Plaintiff requiring to lead any evidence. Such an Application can never be allowed at the outset by the learned Trial Court. Considering the

Application appropriate order returning cogent findings in paragraph No.5 of the impugned order determining that such an Application cannot be granted at an interlocutory stage is passed by the Trial Court.

4. In view of the specific prayers prayed for by the Plaintiff, the appointment of Court Commissioner at the inception stage cannot be permitted. I do not find any reason to interfere with the impugned order dated 01.04.2024 which has been passed after considering the relevant citations and case laws. The impugned order dated 01.04.2023 is sustained.

5. In view of the controversy emanating between the parties, it would be in the interest of justice if Regular Civil Suit No.301 of 2023 is directed to be expedited.

6. Learned Trial Court is directed to decide and adjudicate the Suit as expeditiously as possible and in any event within a period of eight (8) months from today.

7. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless it is utmost necessary due to any emergency / exigency.

8. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

9. I am informed by Mr. Kalel that the stage of the Suit is that of witness action of the Plaintiff. Be that as it may, the learned Trial Court shall immediately proceed with the witness action and determine the Suit proceedings strictly in accordance with law.

10. The learned Trial Court shall not be influenced by any observations and findings given in this order as also the impugned order dated 01.04.2023 as they are purely *prima facie* in nature and determine the Suit strictly in accordance with law.

11. All contentions of the parties are expressly kept open before the learned Trial Court.

12. With the above observations and findings, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.06.12
11:12:43 +0530