

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9260 OF 2024

Prabhavati Namdev Gaikwad

.. Petitioner

Versus

Shahaji Tukaram Gaikwad and Ors.

.. Respondents

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• Mr. Rahul Vitthal Shinde, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : JULY 12, 2024

P.C.:

- 1.** Heard Mr. Shinde, learned Advocate for Petitioner.
- 2.** In the suit filed for declaration and injunction by the Plaintiffs, application below Exhibit-5 is rejected by order dated 01.09.2022 in Regular Civil Suit No.196 of 2022 which is appended at page No.40 of the Writ Petition.
- 3.** The Plaintiffs takes out an Application below Exhibit-18 for appointment of Court Commissioner and that Application is allowed by Trial Court by the impugned order dated 25.04.2024.
- 4.** Mr. Shinde would submit that allowing such an Application for appointment of Court Commissioner in Suit filed for declaration and injunction by Plaintiffs would naturally amount to gathering of evidence at pre-trial stage even before Plaintiffs' witness steps into witness box.

5. He would therefore submit that the impugned order dated 25.04.2024 is unsustainable. After perusing the impugned order dated 25.04.2024 and order passed below Exhibit-5 which has been rejected by Trial Court, the impugned order dated 25.04.2024 for appointment of Court Commissioner is not sustainable in law.

6. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition within a period of two weeks from today. Plaintiffs are directed to raise their objections before this Court on the next adjourned date.

7. The impugned order dated 25.04.2024 is immediately stayed.

8. It is clarified that this Writ Petition shall be disposed at the stage of admission itself by passing appropriate orders.

9. Stand over to **26th July, 2024 at 02:30 p.m.**