



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 4663 of 2021

Chandrashekhar S/o Balkrishna Motghare

Versus

Madhukar S/o Balaji Shegaonkar and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.A.Abhyankar, Advocate for the petitioner.

Shri Vikas J. Dharkar, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 1st APRIL, 2024.

Heard.

2. The order dated 25th September, 2019 passed by 13th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 734 of 2014, rejecting the application Exhibit 88 for permission to issue witness summons to the defendant no.2 in the suit namely Special Civil Suit No. 734 of 2014, filed at the instance of the plaintiff, is under challenge in this writ petition.

3. The application Exhibit 88 reads thus:

*“... That the plaintiff most humbly submits as under :
That the plaintiff wants to examine defendant no.2 i.e. Assistant commissioner, of Municipal Corporation Nagpur with regards to structure on P.NO.156, Ganesh Nagar, Aazamshah lay-out Nagpur and with respect to the plan submitted on 27.08.2014 and rejected vide letter no. 948-PWD-14 on 22.10.2014.*

Therefore, considering the above reason permission may be granted to issue witness summons to the Assistance Commissioner on N.M.C i.e. defendant no.2 in the interest of justice.

Hence this application.

Prayer:- Prayed accordingly....”

4. While rejecting the said application by the learned trial Court vide impugned order dated 22nd October, 2019 has recorded the following findings.

“Read. Heard.

Plaintiff want to examine the Assistant Commissioner regarding the structure standing on the suit property. Assistant Commissioner is party/defendant in present suit. The plaintiff himself submitted that the defendant no.2 rejected the plan submitted by him. The burden is on plaintiff to prove his case. No reasonable ground appears to call for Assistant Commissioner for giving evidence in respect of structure standing on the suit plot. Hence rejected.”

5. Thus, after going through the contents of the application and the impugned order, I do not find any error committed by the learned trial Court in observing that no reasonable ground appears to call for Assistant Commissioner for giving evidence in respect of structure standing on the suit plot.

6. In the circumstances, the writ petition is dismissed.

[ANIL S. KILOR, J.]