

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1004 WRIT PETITION NO. 2534 OF 2023

NIRMAL SEEDS PVT. LTD. THROUGH SURESH SANDU PATIL
VERSUS
SUKDEO GAJMAL PATIL SINCE DECEASED THROUGH LRS DEVIDAS
SUKDEO PATIL AND OTHERS

...
Advocate for the Petitioner : Mr. Bhide Vinod Y.
Advocate for Respondent Nos. 1 (a) to 1 (c) : Mr. Wagh Jitendra M.
...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 16.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of present petition, the petitioner assails the order dated 29.11.2022 passed below Exhibit-72 by Civil Judge Junior Division, Pachora in Regular Civil Suit No. 73 of 2013, whereby the application filed by the Original Plaintiffs for appointment of Court Commissioner came to be allowed.
3. The learned Counsel Mr. Bhide, for the petitioner submits that the suit was filed for declaration and perpetual injunction and is posted for recording of evidence. The plaintiff has submitted his affidavit of examination-in-chief and cross-examination is not yet done, therefore, the stage of evidence is not concluded. He further submits that through the appointment of Court Commissioner the plaintiff wants to collect

evidence and therefore, learned trial Court ought not to allowed the application.

4. Per-Contra, the learned Counsel Mr. Wagh for respondent supports the order passed by the trial Court.

5. I have gone through the order passed by the trial Court. The plaintiff has not led his evidence and only an affidavit of examination-in-chief is filed by him and as the suit is filed for easementary rights, therefore at this stage appointment of Court Commissioner is not warranted. It is settled principle of law that Court Commissioner cannot be appointed for collection of evidence. The learned trial Court ought not to have allowed the application, therefore, I am inclined to set aside the order passed by the learned trial Court.

6. In view thereof, the Writ Petition is allowed. The order dated 29.11.2022 passed below Exhibit-72 by Civil Judge Junior Division, Pachora in Regular Civil Suit No. 73 of 2013 is quashed and set aside.

7. However, the Original Plaintiff is at liberty to file fresh application for appointment of Court Commissioner after recording of his evidence.

8. If such application is filed by Original Plaintiff the same shall be considered by the learned trial Court in accordance with the law.

(SIDDHESHWAR S. THOMBRE, J.)