



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

WRIT PETITION NO. 4822 OF 2024

Janardhanappa Ramchandrappa Bhatjode and another
..VS..
Babanappa Ramchandra Bhatjode and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vipul Bhise, Advocate for petitioners.
Mr. S.A. Mohta, Advocate for respondent Nos.1 and 2.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : JANUARY 21, 2025

1. Heard learned Counsel for the petitioners and learned Counsel for the respondents.
2. The present petitioners are challenging the order dated 21.06.2024, passed by the Joint Civil Judge, Junior Division, Barshitakli below Exhibit-56 in Reg.C.S. No.30/2018, rejecting the application for appointment of Court Commissioner for local investigation.
3. It appears that earlier writ petition came to be filed by the petitioners bearing Writ Petition No. 7028/2017, challenging the order passed by the Nayab Tahsildar in proceedings initiated under Section 5 of the Mamlatdar's Courts Act, 1906. By that order, the application preferred by the respondents has been allowed and the petitioners have been directed to remove the obstructions caused by them to the right of way, which was confirmed by the Sub-Divisional Officer. It is observed by this Court that Tahsildar as well as Sub-Divisional Officer have taken into consideration report of Talathi as well as spot

inspection of the Circle Officer, which indicates that the existence of the way on which some crops being planted and was obstructed. It is further held that the existence of alternate way is not a relevant factor in the proceedings under Section 5 of the said Act and this Court refused to interfere in the concurrent findings recorded by the authorities below.

4. It also appears that another petition bearing Writ Petition No.4141/2018, came to be filed challenging the refusal of grant of temporary injunction. It was observed by this Court that admittedly since 18.05.2018 there is no protection in favour of the petitioners and on joint statement made by both the parties, Court is directed to proceed with the recording of evidence. This Court was directed to decide the suit within a period of six months.

5. After passing of this order, parties were directed to appear on 14.06.2023, however, instead of direction to decide the suit within six months, on 13.02.2024 i.e. around after eight months, an application for appointment of Court Commissioner came to be filed.

6. Learned Counsel for the petitioners relied on the case of *Malappa Bhikappa Biradar Vs. Aamsidha Bhikappa Baradar & Ors.*, reported in **2022 (4) ALL MR 90**, however, this matter is distinguishable on fact, as there was Court itself of the view that, “appointment of Court Commissioner is necessary for deciding issue brought before it by the rival party”.

7. It is observed by the learned Trial Court that the trial has commenced and the plaintiff has examined his witnesses including the Revenue expert on the point of dispute of road and at the verge of conclusion of trial, the application for appointment of Court Commissioner is moved. No doubt, application for appointment of Court Commissioner can be entertained at any stage however, for that the Court think it fit or necessary to do so for the adjudication and complete justice. It was specifically observed by the learned Trial Court that suit is filed for the relief of declaration and permanent injunction and it is for the plaintiff to discharge his burden to proof casted on him. There is nothing to hold that the report of Court Commissioner would assist the Court in adjudication. However, if such application is allowed, it would be a collection of evidence and filling up of lacuna in the evidence. Moreover, the plaintiff has to establish that removal of the obstruction on the road as directed by the Revenue Authorities without there being authority, for that purpose, whether the alternate way was there or not is not relevant.

8. As such, the application is rightly rejected by the learned Trial Court. Hence, the writ petition stands **dismissed**. The parties to co-operate to the Court to decide the matter as early as possible preferably within a period of three months.

(SMT. M.S. JAWALKAR, J.)