

Order below Exh.63.

1] Plaintiffs have filed this application praying appointment of court commissioner, for local investigation of the damaged road.

2] Plaintiffs stated that they have filed a map alongwith the suit plaint, in which the disputed road is highlighted by Red colour. In the present suit, plaintiffs have filed their examination in chief on 28-06-2016. Thereafter, the road going through survey no. 45 which is shown by Red colour, damaged by defendant NO. 10 Pratibha Dhoble on 12/02/2017 by ploughing the field and planting sugar cane crops and watering it.

3] Also Govt. road emerging from survey No. 48, 56, which is also displayed by Red colour, is damaged by ploughing and planting sugar cane crops by defendant No. 2, 3, 5, 7, 8 and 9 on 30/01/2017. Hence prayed for appointment of commissioner to bring the above circumstances on record and also the facts has mentioned in clause 'A' to 'I' in their application.

4] Defendants strongly opposed the said application on the ground that this application has been filed for the purpose of collecting evidence, as plaintiffs have filed examination in chief on 28/06/2016. They also contended that similar type of application which was filed by them was rejected vide Exh. 50, which was founded on the same

grounds. Therefore, this application is not maintainable as the same facts has already been decided earlier vide Exh. 50.

5] Considering the above facts of the application and the say filed on it, submissions of both the parties, following points are to be determined with my findings against them, for the reasons given below.:

POINTS

FINDINGS

- | | |
|---|------------------------|
| 1] Whether it is essential to appoint Commissioner for local investigation for the purpose of elucidating the matter in dispute ? | ... In negative. |
| 2] What order ? | ...As per final order. |

REASONS

6] **AS TO POINTS NO. 1 AND 2 ::**

On perusal of the application, say filed on it, plaint, written statement, it reveals that, plaintiffs in their plaint itself, have stated that defendants are yielding crops of sugar cane and the defendants were obstructing by preparing a new road on the Bandh of Survey No. 50 and 49. Therefore, on the said avernment in the plaint, it is clear that there were sugar cane crops at the time of the filing of this suit i.e. in the year 2012. Therefore, plaintiffs' prayer in this application that defendants are newly planting sugar cane crops, does not fetch any new circumstances as it has already been prayed by plaintiffs at the time of filing of suit.

7] The alleged damage of the road, has been done on

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30/01/2017 and 12/02/2017. Since then plaintiffs have not filed any complaint either to the police station or any revenue or concerned authority to show their grievance. Also no record to that effect, has been filed. Except, bear allegations in this application, there is no record to show the defendants act, as alleged by the plaintiffs. Therefore, there is no substance in the submissions advanced by the plaintiffs that the circumstances which are created be brought on record.

8] The Learned counsel for the defendants submitted that the appointment of court commissioner will amount to collection of the evidence in this suit, which is not permissible by law. In order to support its submission, he relied on the ratio laid down by the Hon'ble High Court of Bombay, bench at Nagpur in the case “ Syed Mustaque Ahmad s/o. Syed Ismail & Ors. Vs. Syed Ashique Ali Khan s/o. Haidar Ali [2012(1)ALL MR. 80.]. It is observed that “*court commissioner cannot be appointed for the collection of evidence*”. In the present case also, after the plaintiffs have filed examination in chief and pending for cross-examination. Earlier court commissioner application, has been rejected which was based on the same facts. The prayer of the plaintiffs that defendants have planted sugar cane crops newly cannot be accepted as in the plaint itself the sugar cane crops are mentioned. So, if the application is allowed, it will surely lead to collection of evidence, hence the ratio mentioned the above judgment, applies to this case.

9] In the present suit, plaintiffs have already filed his

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examination-in-chief on 28/06/2016. Therefore, this application seems to be filed for the purpose of collecting evidence. Also similar type of application, has been decided earlier vide Exh.50. As the suit is for injunction, plaintiffs can prove the facts by adducing documentary and oral evidence, if the application is allowed, it will lead to collection of evidence, which is not the purpose of local investigation and also not permissible in law.

10] In view of the above discussion and reasons stated above, I am of the view that there is no necessity of appointment of commissioner. Hence, I answer point No. 1 in the negative and proceed to pass the following order for point No. 2.

:: ORDER ::

Application at Exh. 63 is hereby rejected.

Dated : 05/08/2017.

Sd/-xxx
[J.A.Zari],
2nd Jt. Civil Judge, J.D., Kaij.