



**REGULAR CIVIL SUIT NO. 221 / 2021**  
**Laxman Babu Patil Vs. Dadaso Laxman Patil and oth.**  
**ORDER BELOW EXH. 54**

This is an application by plaintiff for appointing court commission for the purpose of sending the sugarcane crop to the factory in the name of court commissioner ; and thereafter submit details of expenditure and receipt to the court, in respect of suit property No. 1-C, i.e. of land Gut No. 55 of village Dharangutti. Say of defendant No. 1 is at Exh. 54.

**02.** Perused application and say. Also perused record and proceeding. Heard learned Advocates for both the sides as considerable length.

**03.** At the outset, it is required to mention that plaintiffs or defendants have not mentioned about relevant provision under which present application can be entertained. Therefore, the provisions of Section 94 ; Order XXVI ; Order XXXIX Rule 7 read with Section 151 of The Code of Civil Procedure are taken into consideration for the purpose of deciding the application. At the time of arguments, learned Advocate for plaintiff emphasised on the provisions of appointment of received as per Order XL Rule 1 of Code of Civil Procedure, and therefore said provisions are also taken into consideration.

**04.** It is not disputed that there is sugarcane crop in said suit property, it is likely to be conveyed to sugar factory, and its payment is going to be made in favour of defendants.

**05.** As per the provisions of Section 94 or Order XXVI of The Code of Civil Procedure, there is absolutely no provision for

appointment of court commissioner for the purpose of receiving any payment by any third person due against any party to the suit, or *inter-alia* between the parties. The scope of provisions of Order XXXIX Rule 7 of The Code of Civil Procedure is also limited, and it does not cover the ambit of appointment of court commissioner for the purpose of receiving such payment. At the most, the payment can be ordered as per the provisions of Order XL Rule 1 of The Code of Civil Procedure, by appointing receiver. However, to that effect, it is required to mention that the suit is for partition and separate possession ; and plaintiff is claiming to have 1/15th share in the suit property, which is quite a negligible one.

**06.** In order to support their respective versions, learned Advocate for plaintiff relied upon the authority of Hon'ble Bombay High Court filed with list at Exh. 66 ; *per contra*, learned Advocate for defendants relied upon authorities of Hon'ble High Court of Orissa filed with pursis at Exh. 63. I have carefully gone through each of them.

**07.** In the authority relied upon by plaintiff, the trial court ordered appointment of court commissioner for conveying the sugarcane to factory and further to deposit the amount in the court, and Hon'ble Bombay High Court, vide order dated 24.01.2017 passed in Writ Petition No. 517/2017, has held that the there is no error in passing said order. Vide this application, plaintiff is requesting for appointing the court commissioner, directing him to convey the sugarcane crop in his own name, and thereafter to submit details of expenditure and receipt about the same to the court. Thus, considering the difference of factual matrices, I am of the view that said authority will not be squarely applicable to the case in hand.

**08.** In addition thereto, it is worth mentioning that when there is clear position before the concerned sugar factory as to from whom they are going to receive the sugarcane crop, there is no necessity to appoint court commissioner for the purposes mentioned by plaintiff.

**09.** Insofar as the consideration of this application as per provisions of Order XL Rule 1 of Code of Civil Procedure is concerned, I am of the view that considering the alleged 1/15th share of plaintiff in the suit property, it will not be apt and just to appoint any receiver for the purposes sought by plaintiff. It is also worth mentioning that appointment of receiver can be ordered if there is eminent danger of any wastage or damage to the suit property in the hands of defendants, but it is not the case in present suit.

**10.** Thus, considering the scope of provisions and factual matrices in the matter, I am of the view that the circumstances on record do not warrant appointment of Court Commissioner or Receiver for the purposes requested by plaintiff. Accordingly, I am also of the view that application is liable to be rejected. Thus following order.

**ORDER**

- 1- Application is rejected.
- 2- Costs to be in the cause.

Jaysingpur  
Dt. 09.03.2023

**( Anand D. Karbhajan )**  
Jt. Civil Judge (Junior Division),  
Jaysingpur, Tq. Shirol, Dist. Kolhapur