

**ORDER BELOW EXH. 43 IN R.C.S.NO.129/2014**

The present application is filed by the plaintiff for appointment of Court Commissioner vide Order XXVI Rule 9 of the Code of Civil Procedure, 1908. The learned advocate of defendants filed his say thereon at Exh. 45 and strongly opposed the application.

2] On considering the application, say filed thereon and record of the case and arguments of both the learned advocates. The following points arise for my determination. I have recorded my findings thereon for the reasons stated thereunder.

| <b>SR.NO.</b> | <b>POINTS FOR DETERMINATION</b>   | <b>FINDINGS</b>                  |
|---------------|---|----------------------------------|
| 1]            | Whether the appointment of Court Commissioner is necessary for the purpose of elucidating the matter in dispute ? | No.                              |
| 2]            | What order ?  | The application stands rejected. |

**REASONS**

**AS TO POINT NO. 1 :-**

3] The learned advocate of the plaintiff contended that, the present suit is filed for perpetual injunction against defendants. He also contended that, the temporary injunction application is also pending and prior to that, it will be necessary to bring real facts on record. He further contended that, it is necessary to bring on record the kinds of trees situated in the suit property, the age of trees and the facilities available for worship and the existence of temple of God Ganesha. He

further contended that, to bring on record, these facts, the appointment of Court Commissioner is necessary. He further contended that, the appointment of Court Commissioner will not cause any loss to defendants. He further contended that, the plaintiff is ready to incur the expenses of Court Commissioner. He lastly prayed for appointment of Court Commissioner for the above mentioned purposes.

4] The learned advocate of the defendant filed his say thereon at Exh. 45 and strongly opposed the application. He contended that, the application is not maintainable. He further contended that, the present suit is filed for perpetual injunction and the temporary injunction is also claimed. He contended that, the existence of temple of God Ganesha and existence of trees are not disputed by these defendants. He further contended that, the question in respect of age of trees and the facilities available for worship is not the fact in issue. The plaintiff is trying to collect the evidence through appointing the Court Commissioner. Therefore, he lastly prayed for rejecting the application.

5] I gone through the plaint. It reveal that, the present suit is filed for perpetual injunction. The plaintiff has also filed a temporary injunction application which is still pending for arguments. During that period, the plaintiff has moved the present application for appointment of Court Commissioner. These defendants have not denied the existence of temple of God Ganesha and the trees in the suit property. The appointment of Court Commissioner for ascertaining the age of trees, kinds of trees, the length and width of suit property and the facilities available for worship is nothing but collection of evidence through Court. It is a well settled law that, the Court Commissioner cannot be appointed for collection of evidence. It is the duty of the

plaintiff to adduce the entire evidence on record on his own footings. Therefore I am of the opinion that, the appointment of Court Commissioner for elucidating the matter in dispute is not necessary. Hence I answer point no. 1 in the negative.

**AS TO POINT NO. 2 :-**

6] I have recorded my findings on point no. 1 in the negative. The appointment of Court Commissioner is not necessary for elucidating the matter in dispute. The application is liable to be rejected. Hence, I pass the following order,

**ORDER**

The application for appointment Court Commissioner stands rejected.

Date :- 12/07/2016.

sdxxx  
( Manikrao R. Satav )  
Civil Judge Junior Division  
Pimpalgaon (B).

