

CNR : MHSNO40003662017

REGULAR CIVIL APPEAL NO. 63/2017

Rajakka Vitthal Gavade & ors.

Vs.

Shivaji Vitthal Gavade

ORDER BELOW EXH. 67

1. This is an application filed by appellants for appointment of Court Commissioner under Order 26 Rule 9 & 10 of C.P.C.

2. Perused the application, affidavit of appellant No. 1 and say of respondent(Exh. 68). Heard learned advocates of both the parties.

3. Appellants have contended that suit properties were and are belonging to the adopted family of husband of appellant No.1 i.e. Vitthal Santu Gavade. Respondent has no concerned with said properties. However, he has filed suit for partition of suit properties. Meanwhile respondent was causing obstruction to the possession of appellants over the suit properties. Therefore they filed application (Exh.19) for grant of ad interim injunction. The said application was partly allowed vide order dated 17/01/2018. Accordingly respondent is restrained from taking amount of sugar cane bill in the 1/3rd share in land bearing Gat No. 2010 and to maintain status quo in respect of possession of suit property till decision of appeal. Therefore appellants prayed for appointment of Court Commissioner for sending sugarcane crop in Land Gat No. 2010 & 919 to Sugar Factory in the name of Court Commissioner.

4. Respondent has submitted that the sugarcane crop in Land Gat No. 2010 be sent to Sugar Factory in the name of Court Commissioner and the bill amount directed to be deposited in the

account of Court.

5. I have heard argument of both the parties. It is not disputed that sugarcane crop need to be sent to the Sugar Factory as crushing season is about to end. In view of order vide applications (Exhs. 29, 45 & 58) it appears that, sugarcane crop during last seasons was sent to factory by appointing Court Commissioner. Both the parties have suggested the name of Adv. Shri J.A. Shaikh as court commissioner.

6. Moreover, I have heard learned Adv. Shri. J.A. Shaikh who is to be appointed as Court Commissioner. He has submitted that he is ready to do the commission work. He also submitted that he has to visit the Sugar Factory 4 to 5 times. Taking into consideration the circumstances of the case and above reasons it appears to be just and proper to appoint Adv. Shri. J.A. Shaikh as a Court Commissioner with direction to send the sugarcane crop in Gat No. 2010 & 919 to Krishna Co-operative Sugar Factory in his name. The commission fees considering the work of commission is assessed to Rs. 6000/- out of which appellants should pay 2/3rd i.e. Rs. 4000/- and respondent should pay 1/3rd i.e. Rs. 2000/-. Therefore the application deserves to be allowed in the interest of justice. Hence following order is passed.

ORDER

1. Application is allowed.
2. Adv. Shri. J.A. Shaikh is hereby appointed as a Court Commissioner.
3. The Court commissioner to send the sugarcane crop in a land Gat No. 2010 and 919 to Krishna Co-operative Sugar Factory, Rethare Budruk, Tal. Karad, Dist. Satara, in his name and concerned authority of the Sugar Factory is directed to deposit the sugarcane bill in the account

of Additional District and Sessions Judge, Islampur.

4. The parties to deposit amount of Rs. 6,000/- towards Commissioner fees. Out of said amount appellants to deposit 2/3rd amount (Rs. 4,000/-) and the respondent to deposit 1/3rd amount (Rs. 2,000/-). Parties to deposit the commission fees within 8 days.

5. Issue commission letter accordingly.

Sd/-

Islampur
Date: 17/01/2022

[Rajshri P. Pardeshi]
District Judge 2 Islampur.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same, word to word, as per original order.

Name of the Stenographer	:	Shri B.M.Patil, Steno, Gr. I
Court Name	:	Dist. Judge – 2 & Addl. Sessions Judge, Islampur.
Date of Order	:	17/01/2022
Signed by P.O. on	:	17/01/2022
Uploaded on	:	17/01/2022