

Order below Exh. 83 in Regular Civil Suit No. 33/2021
CNR No. MHSN050001462021
(Shrikant Tanaji Patil and Ors. V/s Subhash Yashwant kanase and Ors.)

Present application is filed for appointment of Court Commissioner. Defendant No. 1 and 2 submitted that present suit is for perpetual injunction and they have filed their written statement. The dispute arose from the order in road case No. 18/2018 by defendant No. 10. The plaintiffs state that there is no any such road in existence on the Bandh of Gat No. 1127, 1128, 1129, 1130, 1132 and 1133 of village Yede Nipani. On the contrary, the defendants have asserted the existence of such road. The plaintiffs have obstructed the said road and it has been so observed by defendant No. 10. The existence of the road is in question before this Court and it can be best ascertained by appointing a Court Commissioner to visit these properties and to ascertain the existence of road. Hence, this application.

2. The plaintiffs filed say at Exh. 87 and have strongly objected the application. They submitted that there is no such road in existence and no such evidence came before the defendant No. 10. The defendants are trying to collect evidence at the hands of Court Commissioner and it is not permissible. There is ample evidence to show that defendant No. 1, 2 are having alternate road. Hence, the application be rejected.

3. Heard both the Learned Advocates at length.

4. The present suit emanated from the order passed by defendant No. 10 Tehsildar in road case No. 18/2018 on

29.10.2020. He observed that there is a road on the Bandh in between Gat No. 1127,1128,1129,1130,1132 and 1133, which has been obstructed by present plaintiffs. Such orders were passed by defendant No. 10 and thereafter being aggrieved by the said order, a relief of perpetual injunction has been claimed. So far the plaintiffs have also filed an application for grant of temporary injunction at Exh. 6 and it is under consideration.

5. Meanwhile, defendant No. 1 and 2 have filed the present application on 14.09.2021 seeking appointment of Court Commissioner. Learned Advocate for these defendants submitted that the existence of road on the given spot is under dispute and the same can be clearly resolved by appointment of a Court Commissioner. Such appointment will give clarity about the situation . However, Learned Advocate for the plaintiffs strongly objected and stated that the existence or non existence of the road has to be proved by leading independent evidence.

6. The area of dispute is limited to the existence of non existence of the road. As discussed earlier, the plaintiffs have filed a simpliciter suit for injunction. The peculiar dispute requires the parties to lead their part of evidence at the relevant point of time. Now by way of this application, the defendant No. 1 and 2 wants the Court Commissioner to visit the spot and ascertain the locality of the road. Now, this will clearly be collection of evidence and the Court Commissioner and his report will be a tool in the hands of either party. Such is not the expected or desired result of such Court Commission on the spot. So basically, this demand for appointment is hampered and cannot be sustained in the present nature of

dispute. Hence, the order follows,

ORDER

Application is rejected.

Islampur
Date:08.10.2021

Sd/xxx
(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur