

Anil vs. Audumbar.

Order below Exh.18
(Dated 18.8.2016)

01] Present application filed by defendant under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. According to defendant the present suit filed by plaintiffs contending therein that, plaintiffs are the owner and possessor of the suit property land in Gat No.217 situated at Tarapur Tq. Pandharpur, and cultivating the same without any obstruction from any body. The defendant also contended that, the plaintiffs in the present suit pleaded that, in the land Gat No.217 there is a well and they are up-lifting the water of the said well for irrigating the agricultural crops in the land Gat No.217. The defendant also pleaded that, in fact they have also filed a Regular Civil Suit bearing No.488/15, pending before the Civil Court, at Pandharpur, wherein the Hon'ble Court has hold that, the well is situated in the land Gat No.218 and restrained the present plaintiffs. In order to settled the matter at controversy, he prayed for appointment of Court Commissioner for finding out the exact location of the well in dispute. Therefore, he prayed for allowing the application.

02] Say of plaintiffs was called for. Plaintiffs have filed their say vide Exh.21 and strongly opposed the present application. According to him the present application is without any substance and prayed for rejection of it. According to him, the well in dispute is a ancestral one and plaintiffs are using and enjoying the said well since from their forefather. According to him, the defendant has filed present application just for collection of the evidence. Therefore, he prayed for rejection of the present application.

03] Heard Ld. Advocate for both sides.

04] Perused record and documents filed on record in the light of argument advanced. On perusal of the record it is noticed that, the plaintiffs are claiming that, the well in dispute is located in land in Gat No.217, situated at Tarapur, Tq. Pandharpur. On perusal of the record it is also noticed that, the plaintiffs have filed certain documents below list Exh.4. Plaintiffs have filed a certified copy of temporary injunction order, dated 15.12.2015 passed by Ld. 4th Jt.C.J.J.D., Pandharpur in R.C.S.No.488/15. On going through the said order, it is revealed that, the Hon'ble 4th Jt.C.J.J.D.Pandharpur, has restrained present plaintiffs holding that, the said well is located in land Gat No.218 and present defendant is the owner and possessor of the said well. In such circumstances, there is every possibility of conflicting orders in these two suits. Therefore, in my opinion, it would be proper to try both the suits by the same Court. Hence, I proceed to pass the following order.

ORDER

01] Application vide Exh.18 is kept in abeyance.

02] Parties are directed to take steps for clubbing of these suits.

03] Cost in cause.

Date: 18.8.2016.

(**S.S.Aradwad**)
3rd Jt.C.J.J.D.Pandharpur.

R.C.S.NO.32/16

3

Exh.No.