

Order below Exh.52 in R.C.S.08/2017

1. The defendant no.4 to 8 have filed application for appointment of Commissioner. It is contended that, this is a suit for declaration and injunction. It is pending for hearing of application below Exh.5 for interim injunction. So as to have all facts before the Court to decide the application, it is necessary to come on record the factual situation about the houses, cattle-shed, bore-well, well, electric motor, pipeline, construction on suit property etc. If these facts will come on record, it will facilitate in doing justice between the parties. Therefore, commissioner be appointed and he be directed to give report about the abovementioned things in the suit property.

2. The plaintiffs have filed their Say at Exh.54. It is contended that, the application is filed only to prolong the hearing of interim application. As per judgment of the Hon'ble Bombay High Court and Orissa High Court, commissioner cannot be appointed to collect the evidence, hence application be rejected.

3. Heard learned Advocate Shri C.P.Kulkarni for the defendants no.4 to 8. The learned Advocate Shri Madane for the plaintiffs. They have submitted as per their contentions.

4. It is necessary to mention that, at this moment the matter is pending for hearing of application below Exh.5. Such type of applications are decided on the basis of affidavits and documents filed on record. There is no need to have report of commissioner to decide the said applications. Another thing is that, the burden of proving the necessary facts is on the plaintiffs while deciding such applications. It is not on defendants. Therefore there is no need to appoint commissioner on the basis of application of defendants. Another

thing is that the defendants want to brought on record the factual situation of the suit property. It can be brought on record by adducing other kind of evidence. It is not a fact which can be ascertained only by going on the spot. Moreover, the factual situation is evidence for deciding the interim application and such evidence cannot be collected by appointing Court commissioner. Considering all these facts, I find that the application is liable to be rejected. Therefore, order as under:

Order

1. Application is rejected with cost.

Date : 20.06.2017

Place : Dahiwadi

(S.S.Deshmukh)

Jt.C.J.J.D. Dahiwadi