

No. of 2016,
District Court, Sangli.
Date : 17.02..2016.

To,

The Registrar (Legal and Research),
High Court, Appellate Side,
BOMBAY - 400 032.

Subject Forwarding a Report of 1st Workshop
for the Judicial Officers during the year
2015-2016 held on 07.02.2016.....

Reference Hon'ble High Court's letter No.JOTI/
Workshop/649/2015 dated 31.08.2015..

Sir,

With reference to the above mentioned subject I am forwarding the soft copies of papers circulated amongst the Judges. I am also sending herewith the summary of business conducted in the 2nd workshop dated 07.02.2016, alongwith the questionnaire with the answers thereto, as desired.

Hence submitted.

Yours faithfully,


v/c (S.P. Favade) 7/2/16

Principal District and
Sessions Judge, SANGLI.

Enclosed : Summary of business conducted in the workshop
alongwith the Questionnaire with answers thereto.

Copy to : The Joint Director, Maharashtra Judicial Academy,
Uttan.

Summary of business conducted in the 2nd workshop of
Judicial Officers held on 7th February, 2016., at
District Court, Sangli.

The second Workshop for the FY 2015-16 was arranged for the Judicial Officers on 7th February, 2016 at District Court, Sangli in the Bar Association Hall, Sangli. The topics for workshop, on Civil Subject was "Law relating to Easements and for Criminal subject was "Confession under Sections 24 to 30 of the Evidence Act and recording under Section 164 of Cr.P.C.".

2. All the Judicial Officers reported at 09.30 a.m. The workshop was presided over by the Hon'ble Guardian Judges, Hon'ble Lordship Shri Justice A. A. Sayed and Hon'ble Lordship Shri Justice N. M. Jamdar, High Court Bombay. The workshop was inaugurated by lighting the traditional lamp at the auspicious hands of the Hon'ble Guardian Judges, Hon'ble Lordship Shri Justice A. A. Sayed and Hon'ble Justice Lordship Shri N. M. Jamdar, High Court, Bombay. Floral welcome of Hon'ble Guardian Judge Hon'ble Lordship Shri Justice A. A. Sayed was done by Shri S. P. Tavade, the Principal District & Sessions Judge, Sangli. The floral welcome of Hon'ble Guardian Judge, Hon'ble Lordship Shri Justice N. M. Jamdar, Judge, Bombay High Court, was done by Shri D. G. Dhamal, District Judge-1 & Addl. Sessions Judge,

Sangli, and floral welcome of Shri S.P.Tavade, Principal District & Sessions Judge, Sangli, was done by Shri S.V. Kulkarni, District Judge-1 & Addl. Sessions Judge, Islampur.

3. Thereafter, the first session of the workshop started at 10.15 a.m. In this session, initially there was reading of papers on the civil subject : "Law relating to Easements" prepared by Core Committee.

4. Shri D. S. Deshmukh, Civil Judge, Sr.Dn., Sangli read the first part and the second part was read by Shri C.P.Bhagwat, Civil Judge,J.D. & J.M.F.C., Vita. Recent civil case laws were also read.

5. Hon'ble Lordship Shri Justice Sayed appealed to the Judicial Officers to be open for interaction, as everyone would be benefited from the discussion. Thereafter, there was interactive question-answer session between the dais and the participants. During discussion, all the Judicial Officers took active participation. During discussion, both Hon'ble Guardian Judges gave valuable guidance, enlightening the participants on the subject to over come the practical difficulties or problems. His Lordship, also guided that mere plea or defence of easement is not sufficient but it

must be pleaded and proved, that the nature of easement is by necessity, by prescription or by grant. Hon'ble Shri Justice Jamdar expressed that spot inspection could be done by the Judge if both the parties put in joint application. He also stated that now Judges should be take more active interest rather than just being passive. His Lordship also suggested that the judges should adopt jurisprudence in broader sense. When a question in the context of under-water as mentioned in Section 17 of the Easement Act. His Lordship suggested that Judges should also take advantage of advanced technology to know the exact flow of water or any such like issue etc. He emphasized that the conscience of a Judge is required to be satisfied and discretion is to be exercised judiciously. Hon'ble Guardian Lordships also stated that provisions of Mamlatdars Courts Act and Maharashtra Land Revenue Code, while dealing with easement matter should be taken into consideration.

6. The list of questions discussed on the civil subject is enclosed herewith, alongwith the answers thereto.

7. After tea break, the second session of workshop started at 12.15 p.m. on criminal subject,

"Confession under Section 24 to 30 of the Evidence Act and recording under Section 164 of Cr.P.C."

8. There was paper reading by Shri A.A.Chendake, Civil Judge, J. D. & J. M. F. C., Tasgaon, and Smt. A. K. Mandavagade, Civil Judge, J. D. & J.M.F.C., Palus. There was also case law reading by Smt.S.M.Metil, Extra Jt.C.J.J.D. & J.M.F.C., Sangli. Like the civil subject, every Judicial Officer had prepared the question on the subject and suggested the answers thereto.

The list of questions discussed on the criminal subject is enclosed herewith for ready reference, alongwith the answers thereto.

9. On this subject also Hon'ble Lordships shared their valuable views and gave some guiding hints, which would help every judicial officers in the day-to-day smooth working. During interaction session a question was posed, whether in an anticipatory bail application some confession is made, should it be treated as confession. To this majority view was that it should be treated as made as per legal advice to seek bail. Confession must be voluntary and true. We should be very slow in accepting the plea.

10. In the discussion, most of the Judicial Officers took active part and shared their practical difficulties.

11. After completion of discussion, the vote of thanks were offered by Mrs. H. A. Patil, Jt. C. J. J. D. & J. M. F. C., Sangli. The anchoring of entire workshop was done by Shri S. S. Gaikwad, Chief Judicial Magistrate, Sangli.

After the lunch, the workshop was over.

Hence this report. Submitted with due respect.

Sangli.

Date : 12.02.2016.



(S.P.Tavade)
Principal District and
Sessions Judge, SANGLI.

SANGLI DISTRICT
2nd Workshop of Judicial Officers held on
7th February, 2016.

Questionnaire with answers thereto discussed in
the workshop.

Civil Subject Law relating to Easements :

Q. 1 In view of arrangement or partition, plaintiff commonly enjoys the land in portion of the defendant. Whether such easement can be extinguished when alternative access is available?

Ans. It is easement on grant. It will not extinguish merely because plaintiff has alternate access.

Q. 2 Whether Judge should make spot inspection?

Ans. If both the parties put in joint application, Court may carry out spot inspection.

(Justice Shri Jamdar : Judge should take more active interest rather than just being passive).

Q. 3 In common way, both plaintiff and defendants claim easement. Defendant contends that he is using way by way of necessity and plaintiff claims easement by prescription. Whether injunction can be granted?

Ans. Unless and until there are subservient owner and dominant owner easement cannot be considered. It is to be proved who is subservient owner.

Q. 4 Whether easement can be recognized for digging or not doing bore well?

Ans. There is no easement for underground easementary right of water.

However we can take expert's help and report. In some cases we can accept right of easement about underground water. There is no absolute proposition.

Q. 5 Whether trial Court in execution proceeding can record compromise?

Ans. No. Parties should be asked them to go to High Court and seek further order from said Court.

SANGLI DISTRICT
Workshop of Judicial Officers held on
7th February, 2016.

Questionnaire with answers thereto discussed in
the workshop.

Criminal Subject Confession under Section 24
to 30 of the Evidence Act
and recording under section
164 of Cr.P.C.

Q. 1 Whether a statement of witness recorded under
Sec.164 of Cr.P.C. before Magistrate which is not
produced by I.O., is admissible in evidence?

Ans. Yes.

Q. 2 Whether statements of witness before Magistrate
can be taken and treated as substantive evidence?

Ans. No. Such statements can be used only for
contradiction or omissions.
