

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9438 OF 2015

Anil s/o Prabhu Warad,
Age: 48 years, Occ: Business,
R/o. Bardapur, Tq. Ambajogai,
At present Khandoba Galli,
Opp. Mahatma Basweshwar College,
Latur, Tq. & Dist. Latur.

...Petitioner

versus

Yasin s/o Husain Shaikh,
Age: 54 years, Occ: Business,
R/o. House No. 137, Bardapur,
Tq. Ambajogai, Dist. Beed.

...Respondent

.....
Mr. S.V. Warad, Advocate for petitioner
Mr. Shrikant Kulkarni, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 17th NOVEMBER, 2015

ORAL ORDER :

The order dated 17/08/2015 passed by the District Judge-3, Ambajogai in Misc. Civil Appeal No. 20 of 2015 below Exhibit-5 i.e. application for grant of injunction, appointing Advocate as Court Commissioner, is questioned.

2. *Prima facie*, from perusal of the order, it depicts that that Court below, upon considering oral consent of respective parties, has proceeded to pass the order appointing Advocate as Court

Commissioner.

3. The order speaks of collection of evidence by Court Commissioner as regards ascertaining as to possession of the party to the appeal. Same, in my opinion, is not permissible, particularly in the light of scheme of Order 26 Rule 9 of the Code of Civil Procedure. I am fortified in my view as per judgment of this Court in the case of ***Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others*** reported in ***2001(2) Mh.L.J. 959***.

4. In view thereof, the order impugned dated 17/08/2015 passed by learned District Judge-3, Ambajogai below Exhibit-5 in Misc. Civil Appeal No. 20 of 2015 is hereby set aside.

5. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]