

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1110 OF 2015

1. Rajabhau s/o Achutrao Kulkarni PETITIONER
Age - 55 years, Occ - Agriculture

2. Vijaya w/o Rajabhau Kulkarni,
Age - 50 years, Occ - Household

Both R/o Manoli, Taluka - Manwat,
District - Parbhani

VERSUS

1. Dhanshree Mohan Kulkarni RESPONDENTS
Age - 45 years, Occ - Household

2. Gajanan Mohan Kulkarni,
Age - 21 years, Occ - Education

3. Nikhil Nandkumar Kulkarni **DELETED**

4. Rajani w/o Nandkumar Kulkarni,
Age - 25 years, Occ - Nil

All R/o Manoli, Taluka - Manwat,
District - Parbhani

.....

Mr. Sagar S. Phatale, Advocate for the petitioners
Mr. Vivek Bhavthankar, Advocate for respondent No.2

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.

2. Admitted emerging position is that evidence is not yet commenced.

3. In the circumstances, in view of a decision of this court dated 19th January, 2015 in writ petition No. 234 of 2015, which in turn refers to earlier decision of this court as well as of the Supreme Court, wherein this court has considered as under-

“ 9. Since the scheme of Section 75 (b) r/w Order 26 Rule 9 of the Code of Civil Procedure is aimed at elucidating information through local inspection in order to assist the Trial Court in resolving the real controversy at issue, this Court has laid down the law as referred above that such an application for appointment of the Court Commissioner can be filed after commencement of the recording of evidence. It is not disputed that the recording of evidence is yet to commence.” may have to be given regard to.

4. The impugned order, as such, turns out to be premature. In the circumstances, the same stands set aside with liberty to the plaintiff to make appropriate application at proper stage for the relief claimed. Writ petition stands disposed of. Rule is made absolute in aforesaid terms.

5. In the circumstances, interim order, which had been operating staying further proceedings of the suit stands recalled. Suit be proceeded with expeditiously.

[SUNIL P. DESHMUKH, J.]