

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

WRIT PETITION NO. 2046 OF 2016

Noor Khan s/o Taj Khan ..PETITIONER

VERSUS

Shaukat Ali s/o Khudrat Ali & ors ..RESPONDENTS

Mr. Deshpande Dhananjay P., Advocate for
Petitioner.

Mr. S.J. Salunke, Advocate for Respondent Nos. 4
and 5.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th SEPTEMBER, 2017

ORAL ORDER :

In Regular Civil Suit No. 351/2006 for declaration and injunction, in which, the trial Court had concluded the recording of evidence at which point, Defendant Nos. 4 and 5 subsequent purchasers filed an application for appointment of Court Commissioner. Vide impugned order, the said application came to be allowed by the Joint Civil Judge, Junior Division, Majalgaon. As such, this petition.

(2)

2. Considering the contents of the Application Exhibit-261 which is moved by Defendant Nos. 4 and 5 under the provisions of the Order 26 Rule 9 of the Code of Civil Procedure, the cause cited therein, in my opinion does not appear to be germane to the cause which is sought to be espoused in the suit. According to Defendant Nos. 4 and 5 i.e. Respondents herein, the purchasers of the suit property, there are standing crops in the suit land and water pipe line is installed, which is required to be ascertained. As such, factual matrix to be brought on the record through Court Commissioner on behalf of Defendant Nos. 4 and 5, so as to prove their possession will hardly be of any consequence when it is for the Plaintiff to prove his claim.

3. In view thereof, application Exhibit-261 seeking appointment of Court Commissioner for the cause cited therein is misconceived and

(3)

same is rejected. The order impugned dated 21st January, 2011 is quashed and set aside. Learned trial court shall proceed with the suit.

4. Considering the age of the Petitioner-plaintiff, hearing of the suit is expedited.

5. Writ Petition stands disposed of in above terms.

(NITIN W. SAMBRE, J.)

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