

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

922 WRIT PETITION NO. 3782 OF 2017

SOPANRAO ANANTRAO PAWAR AND ANOTHER
VERSUS
FAKIRA RAMA WARUDE AND OTHERS

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Advocate for Petitioners : Mr. Pathan Zafar M

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CORAM : P.R. BORA, J.

Dated: March 30, 2017

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PER COURT :-

1) Heard the learned Counsel for the petitioners. The order passed by learned District Judge-1 dated 11th January, 2017 below Exhibit-26 in Regular Civil Appeal No.167/2014 is assailed in the present petition.

2) The petitioners had filed the aforesaid application seeking appointment of Commissioner for local inspection invoking the provisions under Order 26 Rule 9 of Code of Civil Procedure. The learned first Appellate court rejected the said application observing that during pendency of the suit Commissioner was appointed for local inspection twice and the said Commission reports are on record with photographs. The dispute is as regards to the existence of way and the easementary rights claimed by the plaintiffs over the said way. As has been observed by the first appellate Court, because of

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the earlier two Commission reports the Court is already seized of the entire material about existence or non-existence of way, its width and length etc. It has been further rightly observed by the 1st appellate court that the rights of the parties are to be decided on the basis of the evidence which was brought in the suit and as such, no further evidence is required to be brought on record. This was the reason that the first appellate court rejected the application filed by the petitioners, i.e. original appellants, again appointing of Commissioner for local inspection. I do not see any error in the impugned order. Mere entertaining of the petition will also result in causing delay in disposal of the appeal.

3) The writ petition being devoid of any substance, stands rejected.

(P.R. BORA, J.)

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