

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10542 OF 2017
(Premlata Arvind Agrawal and another Vs. Municipal Corporation,
Aurangabad and another)

Mr.V.K.Patni, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 29/09/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 18/02/2017 passed by the Trial Court thereby rejecting application Exh.28 filed by the petitioners / plaintiffs seeking appointment of a Court Commissioner under Order 26 Rule 9 of the CPC.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners. I have gone through the prayers put forth below Exh.28.

3. I find that this petition need not be entertained for two reasons. Firstly, that the prayer in Exhibit 28 indicates that the plaintiffs seek appointment of a Court Commissioner to measure the suit land from the Western side to the Eastern side and the 24 meter wide road and to report to the Court whether the divider is rightly and correctly laid

down in the middle of the 24 meter wide road. This prima facie appears to be an attempt to collect evidence. Secondly, this Court has consistently held that unless circumstances in rare cases are pointed out, a Court Commissioner cannot be appointed before the commencement of the recording of oral evidence.

4. In the light of the above, this petition, being devoid of merit, is therefore, dismissed. However, in the event any of the litigating sides desire to move an application for appointment of a Court Commissioner after the recording of evidence has commenced, the Trial Court would consider such an application on its own merits.

(Ravindra V.Ghuge, J.)