

(1)

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

WRIT PETITION NO.1809 OF 2014

Shri. Namdeo s/o Kondiba Kharat,
Age: 65 years, Occu: Agri.,
R/o. Kharat Vasti, Pimpalgaon Pisa,
Tq. Shrigonda,
Dist. Ahmednagar

..PETITIONER

VERSUS

1. Rajaram Dagadu Kharat,
Age: 65 years, Occu: Agri.
2. Dhanesh Bhanudas Kharat,
Age: 35 years, Occu: Agri.
3. Lankeshwar Bhanudas Kharat,
Age: 30 years, Occu: Agri.
4. Valmik Dagadu Kharat,
Age: 45 years, Occu: Agri.

All R/o. : Kharat Vasti,
Pimpalgaon Pisa,
Tq. Shrigonda,
Dist. Ahmednagar

..RESPONDENTS

Mr N. V. Gaware, Advocate for petitioner;
Mr R. R. Karpe, Advocate for respondents

CORAM : NITIN W. SAMBRE, J.

DATE : 28th November, 2017

ORAL ORDER:

At the inception of Regular Civil Suit No.383 of 2012, application
Exh.9 moved by respondent No.1 – plaintiff for appointment of the Court
Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure,

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came to be allowed by the Trial Court by the order impugned dated 17th January, 2014. Thus, the present petition.

2. Learned Counsel appearing on behalf of respondent Nos.1 to 4 tried to substantiate his claim that in the given circumstances, the appointment of the Court Commissioner is warranted and for that purpose would rely upon the pleadings and prayers in the plaint.

3. The stage at which application Exh.9 came to be allowed viz. filing of written statement, thereafter the fact that the suit is simplicitor for injunction, are the issues which could have been weighed before the learned Trial Court having regard to the law laid down by this Court in the matters of **Syed Mushtaque Ahmad Syed. Ismail & ors. vs. Syed Ashique Ali Khan Haidar Ali**, reported in **2011 (6) Mh.L.J. 334** and **Dnyandeo Vithal Salke and ors. vs. Dagdu Kadar Inamdar**, reported in **2017 (3) Mh.L.J. 314**.

4. In the wake of above, in my opinion, it will be appropriate to allow the petition in terms of prayer clause (B) and is accordingly allowed.

It is further ordered that respondent No.1 - plaintiff would be at liberty to file an application afresh at appropriate stage and if such application is filed, the Trial Court is expected of to decide the same in the light of the law laid down in the judgments cited supra.

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Writ Petition stands allowed accordingly.

(NITIN W. SAMBRE, J.)

amj