

(1)

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

**WRIT PETITION NO.7790 OF 2014
WITH
CIVIL APPLICATION NO.2141 OF 2017**

1. Qaisaruddin s/o Daud Siddiqui,
Age: 70 years, Occu: Agri.,
R/o. House No. 1-17-27, Mominpura,
Tq. & Dist. Aurangabad
2. Shamim Begum Qaisaruddin Siddiqui,
Age: 63 years, Occu: Agri.,
R/o. House No. 1-17-27, Mominpura,
Tq. & Dist. Aurangabad

..PETITIONERS

VERSUS

1. Ratan Madanlal Patel,
Age: 73 years, Occu: Agri.,
R/o. Near Masjid, Harsool,
Tq. & Dist. Aurangabad
2. Noor Ratan Patel,
Age: 52 years, Occu: Agri.,
R/o as above
3. Gani Ratan Patel,
Age: 49 years, Occu: Agri.,
R/o as above
4. Rasool Ratan Patel,
Age: 47 years, Occu: Agri.,
R/o as above
(respondent Nos.1 to 4
dismissed as per Court's
order dtd. 2/12/2016)
5. Sattar Ratan Patel,
Age: 46 years, Occu: Agri.,
R/o as above
6. Jabbar Ratan Patel,
Age: 42 years, Occu: Agri.,
R/o as above
7. Taher Ratan Patel,
Age: 39 years, Occu: Agri.,
R/o as above

(2)

8. Muktar Ratan Patel,
Age: 37 years, Occu: Agri.,
R/o as above
(respondent Nos. 7 & 8
dismissed as per Court's
order dtd.2/12/2016)

..RESPONDENTS

Mrs A. N. Anasari, Advocate for petitioners

CORAM : NITIN W. SAMBRE, J.

DATE : 15th September, 2017

ORAL ORDER:

Since the averments made in the Civil Application No.2141 of 2017 are not objected, the same stands allowed in terms of prayer clauses (B) and (C). As a result, petition stands restored to the file and is taken out by consent of the parties for final disposal.

2. The order dated 30th June, 2014, below Exh.58, in Regular Civil Suit No.117 of 2010, passed by 8th Joint Civil Judge, Senior Division, Aurangabad refusing to appoint Commissioner under the provisions of Order XXVI, Rule 9 and Section 75 of the Code of Civil Procedure is questioned in the present petition.

3. It is not in dispute that on earlier occasion similar application was moved, which was allowed by the Court and the same was subject matter of challenge in Writ Petition No.1366 of 2011, which came to be allowed on 16th February, 2016, particularly in the backdrop of the fact that already there is a report of measurement.

(3)

4. Learned Counsel appearing on behalf of the petitioners though would draw support from the order dated 16th February, 2012, passed in Writ Petition No.1361 of 2011 to justify the claim for moving an application for appointment of Court Commissioner, still in view of order passed in Writ Petition No.1361 of 2011, thereby quashing the order of appointment of Court Commissioner, in my opinion, the order impugned in the present petition does not call for any interference. Thus, the petition fails and stands dismissed.

(NITIN W. SAMBRE, J.)

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