

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9263 OF 2014

ASHOK TUKARAM YEOLE AND OTHERS
VERSUS
VILAS BALIRAM PATIL AND ANOTHER

Advocate for Petitioner : Shri V.T. Chaudhary.
Advocate for Respondent Nos. 1 & 2 : Shri G.V. Wani.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 02nd August, 2017

PER COURT :

1. The petitioners/original plaintiffs are aggrieved by the order dated 02/05/2014, passed by the Trial Court, thereby, rejecting application Exhibit 42 filed by the plaintiffs, seeking appointment of a Court Commissioner after recording of the oral evidence has commenced.

2. I have heard the submissions of the learned advocates for the respective sides.

3. Exhibit 42 filed by the plaintiffs, puts forth a request for appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure ("CPC"). The impugned order, by which, Exhibit 42 is rejected reads thus ;

"...As trial begin and evidence is going on amendment may cause prejudice to defendant. Hence application rejected."

4. It is apparent that the Trial Court has failed to know that Exhibit 42 was filed for seeking appointment of a Court Commissioner and it has rejected the said application, presuming that it is an application for amendment under Order VI Rule 17 of the CPC.

5. Considering the above, this petition is allowed. The impugned order dated 02/05/2014 is quashed and set aside. Application Exhibit 42 is restored to the file of the Trial Court in R.C.S. No. 696/2012. The litigating sides are at liberty to advance their submissions forthwith on Exhibit 42 and the Trial Court shall endeavor to dispose of Exhibit 42 as expeditiously as possible and preferably on/or before 13/10/2017.

6. Pending Civil Application does not survive and is disposed
of.

(RAVINDRA V. GHUGE, J.)

S.P.C.