

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11016 OF 2017

VISHNU GOROBA ARADWAD AND ANOTHER
VERSUS
HANIFABEE MUSTAFA SAYYED AND ANOTHER

...

Advocate for Petitioners : Shri Gunale V.D.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: September 11, 2017

...

PER COURT :-

1. The petitioners are aggrieved by the order dated 24.8.2016, which is challenged in this petition on 31.7.2017, by which, the trial Court has rejected application Exhibit 21, filed by the petitioners / plaintiffs seeking appointment of a Court Commissioner under Order XXVI Rule 9 of the CPC.

2. I have heard the strenuous submissions of Shri Gunale, learned Advocate for the petitioners.

3. It is undisputed that Exhibit 21 was filed before the framing of the issues and commencement of the trial in RCS No.312 of 2016. Reliance is placed on the judgment of this Court in the matter of Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade [2004]

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2 - WRIT PETITION NO. 11016 OF 2017

(2) Mh.L.R. 722], to support the contention that a Court Commissioner can be appointed for the joint measurements of the properties at issue, when the dispute is with regard to the boundaries, encroachment and fixing of the boundaries.

4. This Court has in several judgments concluded that a Court Commissioner is normally to be appointed only after the recording of the evidence has commenced. It is only in rare circumstances that such a Court Commissioner could be appointed prior to the said stage.

5. Considering the above, this petition is dismissed since Exhibit 21 was filed even before the issues were cast. Needless to state, considering the law laid down in the case of Kashinath (supra) and in several judgments of this Court, the litigating parties in RCS No.312 of 2015 would be at liberty to seek appointment of a Court Commissioner after the recording of evidence has commenced and in the event of the filing of such application, either by the plaintiffs or the defendants, the trial Court will consider the same, in the light of the judgments delivered by this Court, on its own merits.

(RAVINDRA V. GHUGE, J.)

...