

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

WRIT PETITION NO. 9891 OF 2016

M/s Prabhakar Vitthal Kotgire
Indian Oil Dealer
Through Authorized Person
Madhavrao Vitthalrao Kotgire
(Died) Through L.Rs.

1. Ashish Madhavrao Kotgire
Age: 45 years, Occu.: Business,
R/o Old Mondha, Nanded.
2. Smt Prabhabei Madhavrao Kotgire
Age: 66 years, Occu.: Business,
R/o Old Mondha, Nanded.

..PETITIONERS

VERSUS

1. Dattatraya Shankarrao Mogadpalli
(Died) Through L.Rs.
- 1-1. Sudhir Dattatraya Mogadpalli
Age: 62 years, Occu.: Business,
R/o Gurudwara Gat No.3, Nanded
- 1-2. Shyam Dattatraya Mogadpalli
Age: 56 years, Occu.: Business,
R/o Gurudwara Gate No.3, Nanded.
- 1-3. Smt. Niramala Pradeep Mogadpalli
Age: 61 years, Occu.: Household and Business,
R/o Kailash Nagar, Nanded.
2. Lamikantrao Shankarrao Mogadpalli
(Died) Through L.Rs.

2-1. Satish Laxmikantrao Mogadpalli
Age: 64 years, Occu.: Nil,
R/o Borban Factory, Vazirabad,
Nanded.

2-2. Sharad Laxmikantrao Mogadpalli,
Age: 52 years, Occu.: Business,
R/o Borban Area, Vazirabad,
Nanded.

3. Nandkumar Shankarrao Mogadpalli
Age: 72 years, Occu.: Business,
R/o "Mathura", Near B.K. Hall,
Kailash Nagar, Nanded.

4. Avinash Shankarrao Mogadpalli
Age: 68 years, Occu.: Pensioner,
R/o Manik Nagar, Nanded.

..RESPONDENTS

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Mr. M.M. Patil (Beedkar), Advocate for petitioners.
Mr. V.V. Bhavthankar, Advocate for Respondent No.4.
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CORAM : S.B. SHUKRE, J.
DATED : 20th MARCH, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the contesting parties.

2. This writ petition questions the legality and correctness of order dated 30th August, 2016 passed below Exhibit 36, an application seeking appointment of Court Commissioner for the purpose of inspecting

the northern portion of the suit property sold by sale deed no. 4657/10, dated 27th April, 2010.

3. The First Appellate Court rejected the application below Exhibit 26 on the ground that appointment of Court Commissioner for inspection of northern portion of the suit property is not necessary, in the facts and circumstances of the case, particularly when such an application amounts to collection of the evidence.

4. According to the learned Counsel for petitioners, the appointment of Court Commissioner was necessary to bring out on record the factual situation which would support the contention of the petitioners, the tenant of the suit shop, that no hardship is going to be caused to the respondents if the tenant is not called upon to vacate the suit shop. Learned Counsel for respondents submits that this is a clear attempt of collecting the evidence.

5. I think, learned Counsel for respondent is right. When the contention is that by refusing decree of eviction, no hardship is going to cause to the landlord, it is for the tenant to adduce necessary evidence in that regard. If tenant seeks local inspection of some portion of the

building in which suit shop is situated, just to support such a contention, it would be nothing but an attempt to collect the evidence. The tenant can always, by adducing independent evidence, prove his contention that no hardship is going to be caused to the landlord by refusing the decree of eviction. It is for this reason, Court's intervention by appointment of the Court Commissioner is not necessary.

6. In the circumstances, I do not see any illegality in the impugned order. Writ petition is dismissed with costs. Rule is discharged.

(S.B. SHUKRE, J.)

SSD