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

**WRIT PETITION NO.10668 OF 2016
WITH
CIVIL APPLICATION NO.4658 OF 2017**

Ghanshyam Piraji Wanole,
Age: 80 years, Occu: Agri.,
R/o. Lohgaon, Tq. Biloli, Dist. Nanded,
Through Power of Attorney
Chandrakant Ghanshyam Wanole,
Age: 30 years, R/o. as above

..PETITIONER

VERSUS

1. Maroti Piraji Wanole,
Age: 75 years
2. Pandhari Piraji Wanole,
Age: 65 years
3. Dadarao Piraji Wanole,
Age: 60 years
4. Vishwanath Kishan Wanole,
Age: 43 years
5. Shankar Kishan Wanole,
Age: 40 years
6. Balaji Kishan Wanole,
Age: 38 years
7. Anjanabai Ananda Wanole,
Age: 50 years
8. Ram Namdeo Wanole,
Age: 45 years
9. Girjabai Mohanrao Wanole,
Age: 55 years
10. Maroti Sambahji Wanole,
Age: 38 years
11. Eknath Shivram Wanole,
Age: 75 years
12. Maneji Shivram Wanole,

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Age: 65 years,

All Occu: Agri., R/o. Lohgaon,
Tq. Biloli, Dist. Nanded

13. Grampanchayat Office, Lohgaon,
Through Gramsevak, Grampanchayat
Office, Lohgaon, Tq. Biloli,
Dist. Nanded

14. State of Maharashtra,
Through District Collector,
Nanded

..RESPONDENTS

Mr V. V. Bhavthankar, Advocate for petitioner;
Mr G. G. Suryawanshi, Advocate for respondent No.13;
Mr C. V. Dharurkar, A.G.P. for respondent No.14

CORAM : NITIN W. SAMBRE, J.

DATE : 15th September, 2017

ORAL ORDER:

Defendant no.13 – Grampanchayat, in Regular Civil Suit No.31 of 2016 for partition and separate possession, filed application Exh.39 under Order XXVI, Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner, so as to ascertain existence of Zilla Parishad school building, which is used as Samaj Mandir and other ancillary reliefs, which is allowed by the order impugned dated 14th September, 2016.

2. Learned Counsel appearing on behalf of the respondents though supported the order of appointment of Court Commissioner on the ground that it is a public property and there is also revenue entry to that effect, still it is required to be appreciated that recording of evidence in the aforesaid suit is yet to commence and what is sought to be done by the present

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petitioner-defendant, is to collect evidence which, in my opinion, is not permissible under the scheme of Order XXVI, Rule 9 of the Code of Civil Procedure. The law laid down on the aforesaid issue is well settled, as is apparent from the judgment of this Court, in the matter of **Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others**, reported in **2001 (2) Mh.L.J. 959**.

3. In the light of what has been stated herein above, writ petition stands allowed in terms of prayer clause (A). However, the petitioner – defendant no.13 will be at liberty to take out such application at an appropriate stage of the proceedings.

4. In view of above, pending Civil Application does not survive and stands disposed of accordingly.

(NITIN W. SAMBRE, J.)

amj