

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2054 OF 2017

1. Rajendra Sitaram Gujar
Age 36 years, Occ. Agriculture
R/o Tuljai Nagar, Nagar Road,
Beed.

2. Balu Sitaram Gujar
Age 31 years, Occ. Agriculture
R/o Tuljai Nagar, Nagar Road,
Beed.

..Petitioners

Versus

1. Radhabai Ankush Ghodke
Age 51 years, Occ. Agriculture
and household, R/o Ghodka Rajuri,
Tq. and Dist. Beed.

2. Dhanraj Ankush Ghodke,
Age 31 years, Occ. Agriculture
R/o Ghodka Rajuri, Tq. and Dist. Beed.

3. Nitin Ankush Ghodke,
Age 29 years, Occ. Agriculture
R/o Ghodka Rajuri, Tq. and Dist. Beed.

4. Manoj Ankush Ghodke,
Age 26 years, Occ. Agriculture
R/o Ghodka Rajuri, Tq. and Dist. Beed.

..Respondents

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Advocate for Petitioners : Shri H.V.Tungar
Advocate for Respondents : Shri G.K.Naik Thigale
h/f Shri D.D.Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 03, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioners are aggrieved by the order dated 14.9.2016 passed by the trial Court, by which, application Exhibit 23, filed by the petitioners / plaintiffs seeking appointment of the Court Commissioner has been rejected.
5. I have considered the strenuous submissions of the learned Advocate for the petitioners and the respondents. Record reveals that Exhibit 23 was filed before the commencement of the recording of oral evidence.
6. This Court has consistently held that a Court Commissioner should not be appointed prior to the commencement of the recording of oral evidence. It is only in rare circumstances that such a Court Commissioner could be

appointed even before the recording of oral evidence.

7. The petitioners apprehend that the defendants are trying to encroach the suit property and hence it is necessary that a Court Commissioner be appointed to find out whether there is any encroachment. I do not find these circumstances to be rare or peculiar in nature so as to permit the appointment of a Court Commissioner before the recording of oral evidence.

8. As such, this petition is disposed off without interfering with the impugned order. Needless to state, after the recording of oral evidence, if either of the litigating sides desire to seek an appointment of a Court Commissioner and file an application, the trial Court would consider the said application on its own merits and without being influenced by its observations in the impugned order dated 14.9.2016.

9. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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