

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2408 OF 2016

Neelabai w/o Baburao Samindre,
Age-72 years, Occu-Household,
R/o Mali Galli, Parbhani,
Tq. and Dist. Parbhani

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Collector, Parbhani,
Tq. and Dist.Parbhani,
2. The Taluka Inspector Land Record,
Parbhani, Administrative Building,
Parbhani, Tq. and Dist.Parbhani
3. Narayan s/o Laxminrao Samindre,
Age-42 years, Occu-Business,
R/o Mali Galli, Parbhani,
Tq. and Dist.Parbhani

-- RESPONDENTS

Mr.P.N.Kalani, Advocate for the petitioner.
Mr.S.N.Kendre, AGP for respondent Nos. 1 and 2.
Mr.P.F.Patni, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/01/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 17/07/2015 by

which his application Exh.25 dated 20/04/2015 seeking appointment of a Court Commissioner under Order 26 Rule 9 of the CPC has been rejected. Grievance is that the petitioner/applicant was not heard.

3. Mr.Patil, learned Advocate submits that it is settled law that an application for appointment of Court Commissioner is not to be entertained before the commencement of trial. In the instant case, the trial is yet to commence.

4. Mr.Kalani, learned Advocate, in rebuttal submits that he would prefer to file a proper application under Order 26 Rule 9 after the commencement of trial.

5. Considering the above, I do not find that the impugned order dated 17/07/2015 could be termed as being perverse or erroneous since the petitioner had failed to argue the application after filing of the say of the defendants for about 2 months. Moreover, an application for appointment of Court Commissioner is not to be entertained before the commencement of the trial. Needless to state, the petitioner or any litigating side can move such an application, if desired, after the commencement of the trial.

6. This petition is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)