

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1066 OF 2018
(Vishwanath Suryabhan Mhaske and others Vs. Rambilas Bhikchand
Tiwari and others)

Mr.N.B.Narwade, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/01/2018

PER COURT :

1. The petitioners, who are original plaintiffs, are aggrieved by the order dated 29/06/2017, by which application Exh.9 filed in RCS No.281/2014 praying for the appointment of a Court Commissioner, has been rejected.

2. Learned Advocate for the plaintiffs has strenuously criticized the impugned order. He has drawn my attention to the several grounds formulated in the memo of the petition and I have considered the petition paper book with his assistance.

3. There is no dispute that RCS No.281/2014 is yet to reach the stage of framing of issues and commencement of trial. Application Exh.5 praying for temporary injunction is still pending. This Court has consistently held as in Sayed Mushtak Ahammad Vs.Sayed

Ashique Ali Khan [2011(6) Mh.L.J.334], Nalubai Shinde and others Vs.Gopinath Shinde [2011(2) Mh.L.J.991] and in catena of judgments that local inspection u/s 75 r/w Order 26 Rule 9 of the CPC through the Court Commissioner, is not to be permitted until the oral and documentary evidence is recorded. The purpose of local inspection is not for collecting evidence, but for eliciting further information so as to clear all doubts after recording of evidence.

4. In the instant case, the application for temporary injunction is yet to be adjudicated upon and therefore, I do not find that the Trial Court has committed any error in rejecting application Exh.9. This petition, being devoid of merit, is therefore, dismissed.

5. However, it is made clear that after recording of oral evidence, if either of the litigating sides moves an application, seeking appointment of a Court Commissioner, the Trial Court would consider the said application on its own merits and without being influenced by its observations in the impugned order dated 29/06/2017.

(RAVINDRA V. GHUGE, J.)