

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

WRIT PETITION NO.10216 OF 2019

DINKAR YADAV SATPUTE
VERSUS
MANGAL MADHAV SHETE AND OTHERS

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Advocate for Petitioner : Mr. Kanawade Ajay T.
Advocate for Respondents 1,3 to 13 : Mr S K Shinde

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CORAM : V.K. JADHAV, J.
Dated : March 20, 2020

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COURT'S ORDER :-

1. Heard both sides. With the consent of the learned counsel for the parties, this writ petition can be disposed off at admission stage.

2. By way of this writ petition, the petitioner/original defendant no.1 has challenged the order passed below Exhibit 30 in Regular Civil Suit No.532 of 2017 dated 10.7.2019 by the Civil Judge, J.D., Sangamner, thereby appointing the Court Commissioner. It thus appears that the impugned order below Exhibit 30 came to be passed before framing of the issues and recording the evidence of

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respondents/plaintiffs. In the interim order dated 19.8.2019, this Court (Coram : Ravindra V. Ghuge, J.) has referred eight cases, wherein this Court has expressed a view that before framing of the issues and recording of the actual evidence, the Court Commissioner should not be appointed. Learned counsel appearing for the respondents/plaintiffs has also not disputed this position.

3. In view of the same, writ petition deserves to be allowed with the liberty to the respondents/plaintiffs to file an application for appointment of the Court Commissioner at the appropriate stage and, upon filing of such an application, the Trial Court may consider the same, on its own merits, uninfluenced by the order passed in the present writ petition. Hence, I proceed to pass the following order.

ORDER

- i. Writ Petition is hereby allowed.

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- ii. The impugned order dated 10.7.2019 passed by the learned Civil Judge, Jr. Division, Sangamner below Exh.30 in Regular Civil Suit No.532 of 2017 is hereby quashed and set aside.
- iii. Application Exh.30 in R.C.S. No.532 of 2017 is hereby rejected.
- iv. Respondents/plaintiffs would be at liberty to file an application for appointment of the Court Commissioner at the appropriate stage i.e. after framing of the issues and recording of the plaintiff's evidence and upon filing such an application, the Trial Court shall consider the same, on its own merits, uninfluenced by the result of this writ petition.
- v. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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