

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 980 OF 2021

SHESHRAO S/O SHIVRAM SHINDE DIED THROUGH LRS
PANDIT S/O SHESHRAO SHINDE
VERSUS
RAMCHANDRA S/O TULSHIRAM SHINDE

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Advocate for Petitioners : Mr. Halkude Sharad S.

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CORAM : V. K. JADHAV, J.
DATED : 27TH JANUARY, 2021

PER COURT :-

1. I have heard learned counsel for the petitioner. Learned counsel for the petitioner, on instructions, seeks leave to withdraw this Writ Petition.

2. Leave granted. The Writ Petition is disposed of as withdrawn.

3. Learned counsel for the petitioner however submits that the learned District Judge, while rejecting the application Exhibit 23 filed by the petitioner for appointment of Court Commissioner at the appellate stage, has observed

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many things. However, final argument in the appeal is yet to be commenced. Learned counsel submits that the appellate court should not get prejudiced by its earlier observations while deciding the appeal on merits, including the grounds raised by the petitioner about the defective measurement because of accumulation of back-water in the suit property.

4. The learned District Judge has decided the application Exhibit 23 seeking appointment of Court Commissioner by making observations *prima facie*. Learned District Judge has to hear the parties finally to dispose off the appeal. In view of the same, the observations made in the impugned order passed below Exhibit 23 should not come in the way to decide the appeal on its own merits. Learned District Judge shall consider the grounds raised by the petitioner about the defective measurement and other connected grounds on merits while disposing off the appeal.

(V. K. JADHAV, J.)

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