

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 1765 OF 2017

SHRI JIVANLAL HEMCHAND SHAH DIED THROUGH LRS
NIRMALABAI JIVANLAL SHAH AND OTHERS
VERSUS
SHRI TEKCHAND REHADAMAL KATARIYA DIED THROUGH
LRS SHANTIDEVI TEKCHAND KATARIYA AND OTHERS

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Advocate for Applicants : Mr. Mukul S. Kulkarni
Advocate for Respondent Nos. 1A to 1D & 2 : Mr. Aditya N.
Ayachit h/f Mr. K. C. Sant

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CORAM : V. K. JADHAV, J.
DATED : 25TH FEBRUARY, 2021

PER COURT :-

1. By consent, heard both sides finally at admission stage.
2. The petitioners are the original defendants. The petitioners are the tenants over the suit property and the respondent-landlord has filed a suit for eviction bearing Regular Civil Suit No. 81 of 2006. In the pending suit, the petitioners-defendants filed application Exhibit 139 for appointment of Court Commissioner for the reason that there is common wall between the tenanted portion of the house and the house purchased by the respondent-landlord
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in the name of his wife Shakuntala and since the respondent-landlord has tried to demolish the said house, the tenanted house also got damaged. Learned counsel submits that the petitioners have placed before the trial court the photographs to substantiate the case. However, the trial court has refused to appoint Court Commissioner.

3. Learned counsel for the respondents has supported the impugned order passed by the trial court below Exhibit 139.

4. I have carefully gone through the impugned order passed by the trial court. In para no.3, the trial court has specifically observed that the adjacent property to the suit house property has been purchased by the wife of respondent no.1, namely, Shakuntalabai and she had demolished the said property. However, the tenanted house in which the petitioners are residing and carrying out business, prima facie appears to be in good condition. Though certain photographs are placed before the trial court, however the trial court has observed that it is not

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clear from the said photographs that those are of the suit house.

5. In view of the above, I find no error in the order passed by the trial court. Considering the observations made by the trial court while deciding application Exhibit 139, I find no substance in this Writ Petition. The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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