

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

910 WRIT PETITION NO.4703 OF 2022

**PUNJAHARI PRABHAKAR NANA SHAHARWALE AND OTHERS
VERSUS
LAXMIBAI KADUBA RODGE**

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Advocate for Petitioners : Panale Sachin S.

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CORAM : NITIN. B. SURYAWANSHI, J.

DATE : 27th APRIL, 2022.

PER COURT :

1. The petitioner is aggrieved by the order passed by the learned 2nd Jt. Civil Judge, Junior Division, Kannad, below Exh. 59 in R.C.S. No. 69 of 2015, thereby rejecting the application filed by the petitioner-original defendant seeking direction to the Court Commissioner to remove the deficiencies in his report and to file report after removal of the deficiencies.

2. Admittedly, the suit is filed for perpetual injunction. Twice, the Commissioner is appointed in the suit, however, it is the grievance of the petitioners that the Commissioner has not submitted his report as per the directions of the trial Court.

3. In the suit the issues are yet to be framed. The application filed by the petitioners, therefore, is premature. During the course evidence, the petitioner is entitled to point out to the trial Court that the Commissioner has not submitted the report as per the directions of the Court. At that stage, if the application is filed by the petitioner seeking removal of deficiencies in the Commissioner's report, the trial Court shall consider the said application on its own merits, without being influenced by the order passed below Exh. 59. With this liberty, the Writ Petition is disposed of.

(**NITIN B. SURYAWANSHI**)
JUDGE

mahajansb/