

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9973 OF 2021

Baburao Tulshiram Patil and Another

PETITIONERS

VERSUS

Natthu Trimbak Choudhary and Others

RESPONDENTS

.....

Mr. B. K. Patil, Advocate for the petitioners

Mr. Santosh Pawade h/f Mr. A. M.Solak, Advocate for R-1 to 8

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th AUGUST, 2022

ORDER :

1. The petitioner is aggrieved by the order dated 15th April, 2019 passed by the learned Civil Judge, Junior Division, Jamner, below Exhibit-20 in Regular Civil Suit No. 137 of 2017, thereby rejecting the application filed by the petitioner under Order XXVI, Rule 9 of the Civil Procedure Code.

2. Having heard the learned advocates for the parties, on merits and after perusal of the impugned order, this Court, at this stage is not inclined to interfere in the impugned order, as the application seeking appointment of Court Commissioner, is filed by the petitioner at a premature stage. This Court has

constantly taken a view that application for appointment of Court Commissioner has to be filed after conclusion of oral evidence of both the parties. Admittedly, in the present case, evidence affidavit is filed by the plaintiff and he is yet to be cross-examined. In that view of the matter, the impugned order need not be interfered at this stage.

3. It is also a settled legal position that in cases of suit for removal of encroachment and recovery of possession, it is desirable to appoint Court Commissioner. In that view of the matter, the writ petition is disposed of with liberty to the parties to file application for appointment of Court Commissioner, after conclusion of oral evidence of the parties.

4. If such application is filed, at that stage, the same shall be decided on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE