

WRIT PETITION NO.2038 OF 2023

Mr. S.P. Dhobale, Advocate for the petitioners.
Mr. S.J. Salgare, Advocate for respondents No. 1 and 2.

DATE : 31st MARCH, 2023

1. Challenge in this petition is to the order passed by learned 2nd Joint Civil Judge, Junior Division, Omerga, below Exhibit-14 in Regular Civil Suit No. 269 of 2019, thereby allowing the application filed by plaintiffs under Order 26 Rule 9 of Code of Civil Procedure.

2. Heard the learned advocate for the petitioners and learned advocate for respondents. Perused the grounds raised in the petition, annexures thereto and the impugned order.

3. Admittedly, in the present case application for appointment of Court Commissioner was filed at a premature stage. Though, issues are framed, yet the evidence has not commenced.

4. It is consistently held by this Court that appointment of Court Commissioner cannot be made at a premature stage and application seeking appointment of Court Commissioner has to be filed after commencement of evidence. Admittedly, in the present case, application for appointment of Court Commissioner was moved at a premature stage even before commencement of evidence. In that view of the matter, writ petition is allowed.

5. Impugned order dated 15.06.2022 passed by learned 2nd Joint Civil Judge, Junior Division, Omerga, below Exhibit-14 in Regular Civil Suit No. 269 of 2019 is hereby quashed and set aside.

6. The parties are liberty to file application for appointment of Court Commissioner after recording of the evidence commences. If such application is filed at that stage, the Trial Court shall consider it on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI, J.]