

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

WRIT PETITION NO.3026 OF 2023

**DNYANESHWAR NARYAN DANGE AND OTHERS
VERSUS
RAMDAS SAYAJI BAWAKE AND OTHERS**

...
Advocate for Petitioners : Mr. Shailesh S. Chapalgaonkar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th MARCH, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 09/12/2022, passed by learned Civil Judge, Senior Division, Rahata, below Exhibit-21 in R.C.S. No.406/2022, thereby rejecting application filed by the petitioners under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner.

2. Admittedly, the application is filed at premature stage. Interim injunction application is yet not decided, so also, issues are not framed. This Court in Writ Petition No.2749/2012 (Ramkrishna Santu Kakad Vs. Reojee Sahadu Kakad & Another), Writ Petition No.8877/2013 (Chandrakant Kashinath Dike & Ors. Vs. Smt. Satyabhama Vishwanath Dike & Anr.) and Writ Petition No.234/2015 (Balkrushna Mahadeo Dongre and Another Vs. Seva Niketan English School, Kopergaon and another) has taken a view that application for appointment of Court Commissioner filed before

commencement of recording of evidence is premature and should not be allowed. The said view is consistently being followed by this Court. In that view of the matter, no fault can be found in the order impugned in the present petition. Writ petition being devoid of merits is dismissed.

3. Parties are at liberty to prefer application under Order 26 Rule 9, after commencement of recording of evidence. If such application is filed at that stage, the same shall be considered on it's own merits, without being influenced by the order impugned in the present petition.

(NITIN B. SURYAWANSHI, J.)