

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3724 OF 2023

Waman Fakira Burud

.... Petitioner

Versus

Ramesh Maruti Dhapse
and others

.... Respondents

.....

Mr. Mahesh P. Kale, Advocate for the Petitioner

Mr. M.K. Bhosale, Advocate for Respondent Nos.1 to 7

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JULY, 2023

ORDER :

1. Order passed by 3rd Joint Civil Judge, Junior Division, Gangakhed, below Exhibit-12 in Regular Civil Suit No.8 of 2022 is impugned in the present petition.

2. In the suit filed by the respondents/plaintiffs for declaration and injunction, after filing of the written statement by the petitioner/defendant, Application under Order XXVI Rule 9 of the Code of Civil Procedure is filed for appointment of Court Commissioner. Despite the opposition on the part of the petitioner/defendant, the said Application is allowed. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and the impugned order.

4. This Court has taken consistent view that application for appointment of the Court Commissioner should not be allowed before conclusion of recording of the evidence. In the present case, admittedly, the Application is allowed at initial stage. In that view of the matter, the order impugned in the present petition cannot be sustained. In the result, the writ petition is allowed.

5. Impugned order dated 11/01/2023 passed by learned 3rd Joint Civil Judge, Junior Division, Gangakhed, below Exhibit-12 in Regular Civil Suit No.08 of 2022 is hereby quashed and set aside.

6. The parties are at liberty to move application for appointment of Court Commissioner after recording of evidence is concluded in the Trial Court. At that stage, if such application is preferred, the same shall be decided on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane