

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6028 OF 2022

Panduran Aadhaar Mali and Another

PETITIONERS

VERSUS

Bhagwan Rajaram Patil and Others

RESPONDENTS

.....

Mr. Abhijit G. Choudhari, Advocate for the petitioners

Mr. A. V. Hon, Advocate for respondents No.1 to 3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2023

ORDER :

1. The petitioners are aggrieved by order dated 29th March, 2022 of appointment of Court Commissioner passed by the learned 3rd Joint Civil Judge, Junior Division, Chalisgaon, below Exhibit-31 in Regular Civil Suit No. 44 of 2021.
2. Respondents No.1 to 3 – original plaintiffs have filed the suit for perpetual injunction and for removal of encroachment made by defendants No.1 and 2.
3. The suit was resisted by the petitioner-defendants, by filing written statement.
4. The plaintiffs, thereafter, filed applications Exhibit-31 and

Exhibit-35 under Order XXVI, Rule 9 of the Civil Procedure Code, for appointment of Court Commissioner. Trial Court allowed application Exhibit-31 and rejected application Exhibit-35. Hence, the present writ petition.

5. Heard learned advocate for the petitioners and the learned advocate for the respondents. Perused the grounds raised in the writ petition and documents filed along with the petition and the impugned order.

6. Admittedly, appointment of Court Commissioner is premature, as the same is ordered even before decision on Exhibit-6, interim injunction application and before the parties have entered into witness box. In view of settled legal position as laid down in "***Mahadeo Kondiba Shinde V/s Nitin Sakharam Shinde***" (2022) 2 ALL MR 593 (Bom) and "***Shantaram Dattatray Kekan and Others V/s Bhausaheb Karbhari Kekan and Another***" (2023) 1 AIR Bom R 554, the impugned order cannot be sustained.

7. In the result, writ petition is allowed. Impugned order dated 29th March, 2022 of appointment of Court Commissioner passed by the learned 3rd Joint Civil Judge, Junior Division, Chalisgaon, below Exhibits-31 and 35 in Regular Civil Suit No. 44 of 2021 is hereby quashed and set aside.

8. Parties are at liberty to move application under Order XXVI, Rule 9 of the Civil Procedure Code, after recording of evidence. If such application is filed, the same shall be decided on its own merits, without being influenced by the order, impugned in the present writ petition.

[NITIN B. SURYAWANSHI]
JUDGE