

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10846 OF 2022

Gajanan Bhagwan Dhanave
and others

.... Petitioners

Versus

Amanullah Sherkha Pathan
and another

.... Respondents

.....

Mr. Shaikh Shoyab MH Shaikh Isaril, Advocate for the
Petitioner

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th MARCH, 2023

ORDER :

1. Petitioner by this petition, filed under Article 227 of the Constitution of India has assailed the impugned order passed by the learned Civil Judge, Junior Division, Paranda, below Exhibit 176 in Regular Civil Suit No.44 of 2007, thereby rejecting the application filed by the petitioners/defendants for appointment of Court Commissioner.

2. The respondent No.1/plaintiff filed suit for declaration and injunction. The suit is resisted by the petitioners/defendants by filing written statement. The parties have led their evidence, and when the matter was kept for final arguments, application below Exhibit-176 is filed by the

petitioners/defendants for appointment of Court Commissioner to ascertain whether in the suit property the Defendants' tin shed is there, and that they have taken sugarcane, onion, maize, wheat and vegetable crops in the suit property.

3. The application was opposed by respondent No.1/plaintiff stating that the application is not tenable in law, and it is beyond the scope and ambit of Order XVI Rule 9 of the Code of Civil Procedure. By this application, the petitioners/defendants are trying to collect evidence. On the issue of possession, already both the parties have led evidence, and therefore, Court Commissioner cannot be appointed to see who is in possession of the suit property. The suit is posted for final argument, and therefore, the application be rejected.

4. The trial Court after hearing the parties rejected the application. Hence, the present petition.

5. Heard the learned advocate for the petitioners. Perused the grounds raised in the petition, documents placed on record and the impugned order.

6. It is settled legal position that Court Commissioner cannot be appointed to ascertain the possession of a party on the suit property. It appears from the record that on the issue of possession, both the parties had led their evidence. The suit is posted for final argument, and therefore, the trial Court has rightly rejected the application on the ground that the defendants are trying to collect evidence at final stage. There does not appear any reason/necessity to appoint Court Commissioner in the facts of the present case. The evidence of parties is recorded at length, and hence no prejudice will be caused, if the application is rejected.

7. There is no illegality or perversity in the order impugned in the petition.

8. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane