

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

WRIT PETITION NO. 1116 OF 2023

Bharatbai Govind Sasane
and others

.. Petitioners

Versus

Prabhau Rama Gaikwad and others

.. Respondents

Shri Raviprasad K. Ashtekar, Advocate for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30TH JANUARY, 2023.

FINAL ORDER :

. The petitioner is aggrieved by the order dated 11th July, 2022, rejecting the application for appointment of Court Commissioner by the Trial Court in R.C.S. No. 730 of 2016.

2. Heard learned counsel appearing for the petitioners.

3. Upon an application filed by the petitioners/plaintiffs for appointment of Court Commissioner, the application was allowed and the Court Commissioner was appointed, who submitted his report below Exhibit 64. The learned counsel for the petitioner submits that, without visiting the spot a false report has been submitted. He would further urge that in such facts and situation, it is necessary that the Court Commissioner be appointed for submitting correct report.

4. Perusal of the impugned order dated 11th July, 2022 shows that there was no objection which was raised by the petitioners to the report of the Court Commissioner below Exhibit 64. The submissions which are raised before this Court were not raised by way of objection to the Court Commissioner report below Exhibit 64. In such a situation fresh appointment of Court Commissioner was not warranted and the said application has been rightly rejected by the Trial Court.

5. One of the reasons why Trial Court has rejected the application is that no evidence as yet been led and, therefore, it cannot be proved that the report filed below Exhibit 64 is incorrect.

6. Liberty to the petitioners after the evidence is led to file appropriate application for appointment of Court Commissioner, which application will be decided by the Trial Court on its own merits and in accordance with law.

7. As there is no merit in the petition, same is dismissed. No cost.

[SHARMILA U. DESHMUKH, J.]