



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1016 WRIT PETITION NO. 2940 OF 2023

SANTOSH DIPAJI SONAWANE DIED THROUGH LRS ANUSAYA
SANTOSH SONAWANE DIED AND OTHERS
VERSUS
SURYABHAN RANGANATH PATOLE DIED THROUGH LRS ASHABAI
SURYABHAN PATOLE AND ANOTHER

...
Advocate for the Petitioners : Mr. S.S. Bora h/f Mr. Badakh Vishal S.
Advocate for Respondent No.1 : Mr. Kothari Pratik P.
Advocate for Respondent No. 2 : Mr. Bedre Vinayak Sudhakar
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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 17.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of the present petition, the petitioners are assailing the order dated 17.02.2023 passed below Exhibit 28 by the 2nd Joint Civil Judge Senior Division, Aurangabad, whereby, the application filed by petitioners for appointment of Court Commissioner came to be rejected.
3. Learned Counsel Mr. Bora for the petitioners/Original defendant No. 2 points out that the respondent No. 1/Original Plaintiff has instituted a suit against notice issued by the Corporation/Respondent No. 2 and the same is pending. It is the case of respondent No. 1/Original Plaintiff that the Corporation issued notice asking the respondent No. 1/Original Plaintiff to remove unauthorized

construction, against which Respondent No. 1/Original Plaintiff preferred a suit.

4. He further submits that based on the complaint filed by the petitioners, the Corporation issued notice and therefore, respondent No. 2/Original plaintiff added the petitioners as defendant Nos. 2A to 2R in the suit, Now the stage of evidence has commenced in the suit. Mr. Bora, points out that the witnesses have been examined on behalf of Corporation. He specifically submits that there was encroachment and therefore to ascertain the same it is necessary to appoint the Court Commissioner. The trial Court has committed apparent error by rejecting the application for appointment of Court Commissioner.

5. Per Contra, Mr. Kothari, learned Counsel for the respondent No. 1 submits that the respondent No. 1 had approached the Civil Court against the notice issued by the Corporation and therefore, it is for the respondent No. 1 prove that notice was not issued in accordance with the law. Respondent No. 1 has to prove by evidence that his construction is authorized one, therefore, the petitioners/Original Defendants are not supposed to collect evidence by way of appointment of Court Commissioner. The suit is for declaration and perpetual injunction wherein, admittedly the petitioners/Original defendant Nos. 2A to 2R have not filed any counter claim or any separate suit seeking relief against Original Plaintiff. Therefore, appointment of Court Commissioner is not necessary. It is for the original Plaintiff to prove his case by proving that his construction is authorized one.

6. Therefore, considering the above reasons, I do not find any reason to interfere with the order dated 17.02.2023 passed below Exhibit 28 by the 2nd Joint Civil Judge Senior Division, Aurangabad under Article 227 of the Constitution of India.

7. In view thereof, the Writ Petition is dismissed. No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)

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