



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6646 OF 2016

VINAYAK VISHWAMBHAR SALUNKE
VERSUS
MUKTABAI SHRIDHAR SALUNKE AND OTHERS

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Advocate for the Petitioner : Mr. Barde Parag Vijay
Advocate for Respondent Nos. 1 to 8 : Mr. Kore Ganesh J.

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CORAM : NEERAJ P. DHOTE, J.
DATE : 08.08.2025

PER COURT :

1. Heard both the sides.
2. Perused the papers on record.
3. The order impugned in the petition is dated 19.04.2016, passed by learned Civil Judge Junior Division, Lohara, below exhibit 29, allowing the application of respondent nos. 1 to 8 for carrying out measurement of the disputed land by appointing the Commissioner.
4. Learned Advocate for the petitioner submits that no evidence was led by the plaintiff and the respondents in the said suit and the said application below exhibit 29 was premature. He places reliance on the order of this Court in **Mahadev Kondiba Shinde Versus Nitin Sakharam Shinde and others, 2021 (5) AIR Bom R 98**. He submits that the impugned order be quashed and set aside.
5. Learned Advocate for respondent nos. 1 to 8 appears online. He submits that no inference is called for in the impugned order. Alternatively, he submits that if this Court allows the petition, respondent nos. 1 to 8 be granted liberty to file application at

appropriate stage after leading evidence. He does not dispute the legal position enumerated in the said order given by the petitioner.

6. Respondent nos. 1 to 8 who are the original plaintiffs before the learned Civil Court had moved an application under Order XXVI Rule 9 of the Code of Civil Procedure, for local investigation by appointing the Commissioner. The said application was allowed by learned Civil Court. This Court in the above referred order by considering various earlier orders on issue involved, have considered the said provisions of Order XXVI Rule 9 of CPC, and observed as follows :

“16. If we read the meaning of the word elucidate along with synonyms in terms of the various dictionaries, as above, it is clear that to elucidate something means to make it clear and easy to understand. In view of the same, after the parties led the evidence, to make the issue involved easy to understand or to make it clear, the discretion is conferred upon the Court in terms of the provisions of [Order XXVI Rule 9 of C.P.C.](#) to appoint the Court Commissioner to obtain the evidence for elucidating the matters.

17. In view of the same, and since there are catena of judgments and orders passed by this court taking consistent view, in the instant case, the order impugned is premature one. The parties have not yet stepped into witness box. The trial court may appoint the court commissioner if the same appears to be necessary to elucidate the matter in dispute. Thus, the order impugned is liable to be set aside

with liberty to the parties to file an application for appointment of T.I.L.R. as Court Commissioner at the stage of evidence.

18. In view of above, writ petition is hereby allowed.

19. The impugned order dated 19.11.2018 passed by the learned Joint Civil Judge, Junior Division, Patoda below Exh.40 in Regular Civil Suit No. 69 of 2012 is hereby quashed and set aside. However, the parties are at liberty to file an application for appointment of Court Commissioner at the stage of evidence and upon filing such application for appointment of T.I.L.R. as Court Commissioner, it is for the trial court to decide the same on its own merits.”

7. Admittedly, respondent nos. 1 to 8 who are the plaintiffs before the learned trial Court filed the said application before leading evidence, which came to be allowed by the impugned order. The matter is covered by the above referred order of this Court. Thus, I proceed to pass the following order :

ORDER

- i. Writ Petition is allowed.
- ii. The impugned order dated 19.04.2016, passed by the learned Civil Judge Junior Division, Lohara, below exhibit 29 in RCC No. 119/2014, is quashed and set aside.
- iii. The parties would be at liberty to file an application under the said Order XXVI Rule 9 of CPC, at appropriate

stage which shall be decided and considered on its own merits.

iv. The Writ Petition is disposed of.

(NEERAJ P. DHOTE, J.)

spc/-