



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 WRIT PETITION NO. 10649 OF 2023

NIVRUTTI SAMBHAJI SONAWANE
VERSUS
BHAGINATH SAMBHAJI SONAWANE AND OTHERS

Mr. M. H. Shaikh h/f Mr. R. M. Shaikh, Advocate for the Petitioner
Mr. D. A. Mane h/f Mr. N. G. Talekar, Advocate for Respondent Nos.1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 18th AUGUST, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the order passed by the Trial Court vide Exhibit 21 in R.C.S. Nos. 228 of 2020 and 3 of 2021, whereby the Application filed by the present Respondents for appointment of the Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, came to be allowed. Petitioner being aggrieved by these orders, filed present Petition.
3. At the outset learned Counsel for the Respondents has raised objection to the maintainability of the Petition on the ground that two order passed in two different suits are sought to be challenged in one

Petition.

4. Learned Counsel for the Petitioner submits that the orders impugned are passed even before the framing of issues. On this count itself according to him, the orders cannot sustain.

5. Though in the contention of the learned Counsel for the Respondents that such petition ought to have been filed for challenging two different orders passed in different suits, is not meritless, but having regard to the fact that the Petition is pending since 2023, so also the suits between the parties are pending since 2020, this technical objection is not accepted and Petition is entertained.

6. There is no dispute about the fact that the Application for appointment of Court Commissioner came to be filed even when the Application (Exhibit 5) is yet to be decided leave apart framing of issues. Order 26 Rule 9 of the CPC contemplates appointment of Court Commissioner to elicit the matter in issue, meaning thereby, if any, explanation is required to the evidence, such appointment could be made.

7. Needless to say that though it is open for the Respondents to make Application for appointment of Court Commissioner at appropriate stage, the orders impugned cannot sustain.

8. Hence, Petition stands allowed. It is clarified that the setting aside of the impugned orders not to be construed as rejection thereof on merit. It is open for the Respondents to prefer appropriate Application at proper stage and the Trial Court is expected to decide the same on merit. Since the suit is five years old, the same is expedited.

(R. M. JOSHI, J.)

ssp