



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8407 OF 2024

Mamta Anil Batra

....Petitioner

VERSUS

Bohra Panch Bhusawal & others

.....Respondents

.....

Mr. P. B. Gamot, Advocate for the Petitioner.

Mr. A. M. Gholap, Advocate for Respondent Nos. 3, 4, 5, 6, 7, 9 and 10.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order dated 13.03.2023 passed in Regular Civil Suit No. 233/2013 whereby the Application filed by the Plaintiffs for appointment of Court Commissioner under Order 26 Rule 9 of Code of Civil Procedure came to be allowed. This Application is filed for conducting local inspection in view of the allegation in the plaint that the Defendant/tenant has carried out construction without permission of the land lord.

3. Learned counsel for Petitioner has drawn attention of the Court to the order passed below Exhibit 5 in the said suit wherein observations are made that Plaintiff Nos 2 to 10 are not trustees and managers of Plaintiff No. 1 and have no right to institute the suit in that capacity. There is further observation that the suit is filed without authority. Relying upon these observations, it is sought to be contended that the Plaintiff cannot file any application for appointment of Court Commissioner. In the alternative, it is his submission that collection of evidence through appointment of Court Commissioner is impermissible in law.

4. Learned counsel for Respondents supported the impugned order. According to him, even if some observations are made by the Trial Court while deciding Exhibit 5, as a matter of fact, the suit is still continued before the Trial Court. It is his submission that considering the nature of dispute with regard to the construction being carried out by the Defendants, order does not suffer from any infirmity.

5. There is no dispute about the fact that the suit is at the stage of framing of issues. Though the dispute has been raised with

regard to the construction carried out by the Defendants/Tenants in the suit property, it is for the Plaintiff to substantiate the said contention by leading evidence. It is not permissible for the parties to seek appointment of Court Commissioner in order to collect evidence. In such circumstances, the stage at which the order is passed, makes it unsustainable.

6. Hence, Petition is allowed. Impugned order is set aside. Liberty, however, is given to the Respondent/Plaintiff to prefer appropriate Application for appointment of Court Commissioner at appropriate stage and the Trial Court shall decide the same on its own merits.

(R. M. JOSHI)
Judge

dyb