



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

68 WRIT PETITION NO. 11442 OF 2024

PRAKASH SANDU PAWAR ALIAS PAWAR PRAKASH SANDU
VERSUS
SACHIN PANDURANG PATIL AND OTHERS

.....

Mr. S. A. Deshmukh, Advocate for the Petitioner

Mr. D. P. Palodkar, Advocate for respondent nos.1 to 5.

CORAM : R. M. JOSHI, J.

DATE : 3rd FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the order dated 27/08/2024 passed below Exhibit 21 in R.C.S. No. 183/2021, whereby the application filed by the defendants/respondents herein for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure came to be allowed.

2. There is no dispute about the fact that the issue involved before the Trial Court is as to who is in the possession of suit property. This is not the case wherein any issue of the dispute over the boundaries is involved. Nor plaintiff claims removal of the defendants from the encroached portion of the suit property.

3. The settled position of law that for the purpose of deciding possession of the party over the suit property, appointment of Court

Commissioner is not permissible. In view of the facts of the case and the issues involved therein, the appointment TILR as a Court Commissioner is nothing but collection of evidence through the Court to prove the possession of defendants over the suit property. This is wholly impermissible in law. As a result of which order cannot sustain. Hence, petition stands allowed. Application (Exhibit 21) stands dismissed.

(R. M. JOSHI, J.)

ssp