



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO. 2759 OF 2016

MANORAMABAI SURYAKANT AGRAWAL THROUGH GPA
SURYAKANT SHAMLAL AGRAWAL AND ANOTHERS

VERSUS

RATANLAL BADRILAL SHARMA AND ANOTHERS

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Advocate for the Petitioner : Mr. S. S. Agrawal

Advocate for Respondent No. 1 : Mr. B. R. Waramaa

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CORAM : MANJUSHA DESHPANDE, J.

Dated : January 29, 2025

PER COURT :-

1. In this writ petition, petitioners are challenging the legality and validity of the order dated 26.08.2015 passed below Exh. 21 in Regular Civil Suit No. 67 of 2008 by Civil Judge Junior Division, Chopada (Trial Court), wherein the application under Order XXVI Rule 9 of The Code of Civil Procedure seeking appointment of Court Commissioner for local investigation has been rejected.

2. While the matter was heard by this Court on 18.04.2016, notices were issued and it has been observed in the order itself that the plaintiffs have not yet adduced the evidence and has filed the application under Section 75 read with Order XXVI Rule 9 of the Code of Civil Procedure, seeking appointment of Court Commissioner. Notice is issued to the respondents to consider whether the defendants can be granted liberty move similar application after the plaintiffs adduces the evidence.

3. Learned Advocate Mr. Waramma appearing for the respondents concedes that since the application is filed before the Trial Court before evidence is adduced, therefore, the application could not have been allowed, since it amounts to collection of evidence. Therefore, the petitioner can file similar application, if found necessary after evidence is adduced.

4. Considering the order dated 18.04.2016, the petitioner seeks liberty to withdraw the writ petition with liberty to file similar application after the evidence is adduced. According to him, evidence has not been yet adduced. Therefore, he is seeking liberty to file similar application after the evidence is adduced.

5. In view of the above, liberty is granted to the petitioners to file application, after the evidence is adduced. Therefore, writ petition is allowed to be withdrawn with liberty as mentioned above.

(MANJUSHA DESHPANDE, J.)

Omkar Joshi