



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO. 12278 OF 2022

Gayabai Namdeo Dhongde
(Deceased through LRs) & anotherPetitioners

VERSUS

Rajubai Devrao Rohite & anotherRespondents

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Mr. A. M. Gholap, Advocate for the Petitioners.

Mr. G. K. Naik Thigle, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 6th MARCH, 2025.

PER COURT :

1. This petition takes exception to the order dated 14.09.2022 passed by the Reference court in LAR No. 1659/2017 whereby the application filed by Petitioners for appointment of Court Commissioner to measure the suit property stood rejected.

2. Learned counsel for the Petitioners submits that the issue involved before the Reference Court is about the area owned by Petitioners and Respondents. It is submitted that unless measurement is made through the Court Commissioner, the issue cannot be decided.

3. Learned counsel for Respondents opposed the the petition on the ground that the application was filed before leading any evidence and in view of provisions of Order 26 Rule 9 of Code of Civil Procedure, it is not permissible for the parties to collect evidence through the Court.

4. There is no dispute about the fact that the application in question came to be filed before any evidence was led. At this stage, learned counsel for Petitioners, on instructions, makes a statement that Petitioners be granted liberty to move application at appropriate stage.

5. In view of the provisions of Order 26 Rule 9 of Code of Civil Procedure, the Court Commissioner can be appointed for the purpose of elucidating the matter and not for collecting evidence. In such circumstances, before any evidence is led by the Petitioners, they have no right to make application for appointment of Court Commissioner. In view of this fact, though the petition is dismissed, liberty is granted to the Petitioners to file application at appropriate stage. If any such application is filed before Reference Court, the said

Court is expected to decide the same on merit and not only for the reason that liberty is granted.

(R. M. JOSHI)
Judge

dyb