

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1022 WRIT PETITION NO. 87 OF 2023

NARAYAN BHANUDAS CHOUDHARI THROUGH THE GENERAL POWER
OF ATTORNEY HOLDER AND OTHERS
VERSUS
BHAUSAHEB SAKHAHARI YADAV

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Advocate for the Petitioners : Mr. Gandhi Amol S.
Advocate for Respondent : Mr. Dattatraya Rambhau Markad and Mr.B.
B. Shelke

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 05.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. The petitioners/Original respondent Nos. 2 to 5 assails the order dated 06.10.2022 passed below Exh. 7 by the learned Joint Civil Judge Junior Division, Rahuri, whereby, the application filed by the Original Plaintiff for appointment of Court commissioner came to be allowed.
3. Learned Counsel for the petitioners submits that the suit is for injunction as well as for fixing boundaries, and therefore, the plaintiff ought not to have filed such application before leading his evidence and even the issues are yet to be framed.
4. I have considered the arguments advanced by Mr. Markad, who appears for respondent/Original Plaintiff. He submits that the suit

is for injunction and for fixing the boundaries, therefore, to ascertain the boundaries, the appointment of the Court Commissioner is necessary, and therefore, he supports the order passed by the learned trial Court and prayed for dismissal of the Writ Petition.

5. The learned Counsel for the Original Plaintiff fairly submits that the application was filed by original Plaintiff alongwith the plaint.

6. The suit is filed for injunction and for fixing boundaries, therefore, it is expected on the part of the plaintiff to first lead evidence and then file application for appointment of the Court Commissioner. As the issues are not yet framed, the trial Court ought not to have allowed the application at this stage, therefore, the order passed by the learned trial Court is liable to be quashed and set aside.

7. In view thereof, the Writ Petition is allowed. The order dated 06.10.2022 passed below Exh. 7 by the learned Joint Civil Judge Junior Division, Rahuri is quashed and set aside.

8. The Original Plaintiff i.e. respondent is at liberty to file fresh application after the parties have lead their evidence.

(SIDDHESHWAR S. THOMBRE, J.)

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