



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13285 OF 2022

Gangamani Wasan Gandapwar And Others

VERSUS

Shrinivas Iranna Medpalwar And Others

- Mr. G. K. Naik Thigle, Advocate for the Petitioners
- U. T. Pathan, Advocate for the Respondents

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 11, 2025

PER COURT :

1. Heard learned Counsels for both sides.
2. There is no dispute about the fact that applications Exhs. 26 and 47 came to be moved under Order XXVI, Rule 9 of the Code of Civil Procedure for appointment of the Court Commissioner. There is further no dispute about the fact that there is a dispute over the area held by the Plaintiff and Defendants. In such circumstances, though the appointment of the Court Commissioner can be justified at appropriate stage, question arises in this Petition as to whether the Plaintiff can be permitted to seek such appointment in order to collect evidence.

3. Admittedly, Plaintiff has not laid any evidence in the suit. The law is clearly settled in respect of appointment of Court Commissioner under Order XXVI, Rule 9 CPC to the effect that appointment can be done for the purpose of elucidating matter in issue. Meaning thereby, if after leading of evidence any explanation is required, for that purpose such appointment would be justified. It is however not permissible for the parties to seek appointment of the Court Commissioner to collect evidence on their behalf.

4. Having regard to the above facts, the stage at which the applications are filed the orders impugned cannot be sustained, hence, are interfered with and stand set aside accordingly.

5. It is clarified that at appropriate stage it is open for the parties to make application for the appointment of the Court Commissioner. If such application is filed, Trial Court to decide the same on merit and not only for the reason that liberty is granted by this Court.

(R. M. JOSHI, J.)