



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1440/2025

Chandrakala Ashok Girhepunje (dead) Tekaram Ashok Girhepunje & Ors. .Vs. Sharad
Ramchandra Meshram

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H.S.Chitaley, Advocate with Mr. S. Joshi, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 20, 2025

Heard.

2. Challenge is to order dated 11.12.2024, passed by learned Civil Judge Junior Division, Lakhani, whereby the Commissioner has been appointed under Order XXVI Rule 9 of the Civil Procedure Code, 1908 (for short the "CPC"), to have inspection of the property so as to ascertain present status to understand the damage caused to the slab of the property under question.

3. Application for appointment of Commissioner was made by respondent – plaintiff. It was his case that pending suit, the petitioners – original defendants, with the help of officers of National Highways Authority of India (For short the, "NHAI), has demolished certain portion of the slab. According to the respondent, some portion of the suit property was acquired by the NHAI, for widening up the road. However, the petitioners with the help of officials of NHAI, have caused additional damage to the suit property by demolishing the portion which was not subject matter of the acquisition.

4. As such, both the parties led evidence, however, since the respondent amended the plaint to the extent of damage caused to the suit property, he is in the witness box for the purpose of proving the amount of damage. Several suggestions were given by the petitioners

in the cross-examination on the point of damages, which are already recorded.

5. In context with the above, he moved an application for appointment of Commissioner under Order XXVI Rule 9 of the CPC. The Court allowed the application only for the purpose of having on record the status of the property. The Court observed that if material facts as to the present status of the property are brought on record, it will help to decide the issue of damages. The Court noted that there is a dispute as to who has demolished the portion of the slab and that will be decided on the basis of the evidence. However, for the purpose of effective answer to the issue involved, it will be necessary to bring on record the status of the property. The Court, further noted that the dispute as regards damage and loss is a matter of evidence and the report of the Court Commissioner can be taken into consideration only upon his cross-examination, if so desired by the parties. Accordingly, the Court Commissioner is appointed with a direction to inspect the suit property and to file report as regards present position of the suit property along with area of suit property, damage caused to the slab, if any, and any other relevant factor that would be helpful for the purpose of ascertaining the loss caused to the plaintiff.

6. Thus, it is evident that the Trial Court has passed the order in consonance with the Order XXVI Rule 9 of the CPC. Merely because the status of the property is sought to be brought on record through Court Commissioner, one cannot argue that this would amount to collection of evidence. What is being brought on record is damage, if any, caused to the slab under question. Whether the damage is caused by the petitioner, is a matter of evidence, as rightly observed by the Trial Court.

7. At this stage, learned counsel for the petitioner has invited my attention to judgment passed by Coordinate Bench of this Court

in *Dhondiram Nivrutti Pawar .Vs. Laxman Khashaba Pawar [2018 SCC OnLine Bom 640]*, wherein settled principle has been reiterated that appointment of Court Commissioner cannot be made for collection of evidence.

8. In the present case, as noted earlier, the appointment has been made for the local investigation and not for collection of evidence. The status of property is something that is relevant, which may be helpful to the petitioner as well. That being so, there appears no perversity in the impugned order. In other words, there is no merit in the petition. The petition is dismissed in limine.

(Anil L. Pansare, J.)