

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO. 1151 OF 2024

BHANUDAS BABAN TONGE AND OTHERS
VERSUS
 KUNDLIK RAMBHAU THORAT AND OTHERS

...

Mr. Sagar P. Mahale h/f. Mr. Shaikh Mazhar A. Jahagirdar, Advocate for
 Respondent Nos.1 to 8

...

CORAM : AJIT B. KADETHANKAR, J.

Dated : March 07, 2026

PER COURT :-

. In the suit of 2020, an application under Order 26 Rule 9 of the Code of Civil Procedure (CPC) was filed by the plaintiffs seeking the appointment of a Court Commissioner. After recording detailed reasoning, the learned Civil Court rejected the application. The learned Civil Court recorded three predominant grounds for rejecting the application:

(i) The nature of the application clearly suggests that the plaintiffs seek to collect the evidence.

(ii) An application to appoint a Court Commissioner under Order 26 of the CPC cannot be filed, nor can such an appointment be made, until the recording of evidence of the party seeking the commission is concluded.

(iii) A court commissioner cannot be appointed to ascertain as to who is in possession.

2. It appears that the learned Civil Judge also observed that,

even for a permissible object under Order 26 of the CPC, the application was premature.

3. Mr. Sagar P. Mahale h/f. Mr. M. A. Shaikh Jahagirdar, learned counsel for the respondent Nos.1 to 8 would submit that the trial is in progress and evidence is part-heard. When the matter was called out in the first session, none appeared for the petitioners. In the second session also, nobody caused appearance for the petitioners.

4. Keep this matter on 09.03.2026 at 10.30 a.m. for dismissal.

(AJIT B. KADETHANKAR, J.)