



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO. 3359 OF 2025

Sudam Mansing Pawar

VERSUS

Baba Hari Rathod And Others

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Advocate for Petitioner : Mr. R.M. Deshmukh

Advocate for Respondents 1,2 : Mr. V. V. Udhan

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 17, 2026

PER COURT :-

1. Present petition takes exception to the order dated 3.3.2025 passed by the learned Civil Judge J.D. Ghansawangi below Exhibit-35 in R.C.S. No.2 of 2025, whereby application filed by defendant to appoint Court Commissioner in terms of Order 39 Rule 7 of the Civil Procedure Code has been allowed.

2. Mr.Deshmukh, learned advocate appearing for petitioner would submit that petitioner has filed suit for perpetual injunction. Defendants had filed Written Statement and counter claim. Matter was posted for arguments on application for grant of temporary injunction. At this stage, defendants filed an application seeking appointment of Court Commissioner to find out how many wells are situated in gat

no.124 and how plaintiff is irrigating his land, particularly, from which well.

3. Looking to nature of dispute between parties, it is necessary for parties to lead evidence before the Court in support of their contentions raised in the pleadings. At the stage of hearing of application for temporary injunction, it is not necessary to appoint Court Commissioner. It is trite that Court Commissioner can be appointed once parties established their case by leading best possible evidence. In case the Court finds that for the purpose of effective adjudication of dispute, appointment of the Court Commissioner is necessary, such order can be passed. However, in this case, defendants filed application for appointment of Court Commissioner under Order 39 Rule 7 of the Civil Procedure Code before application for T.I. is heard and the learned Trial Court allowed such application. This Court finds that exercise of jurisdiction vested under Order 39 Rule 7 of the Civil Procedure Code was not warranted in facts of case. The nature of application and relief claimed was an attempt of collection of evidence, which is not purpose of Rule 7 of Order 39 of the Civil Procedure Code.

4. In that view of the matter, writ petition is allowed in terms of prayer clause 'C'. Needless to state that respondent/defendants shall be at liberty to file application for appointment of Court Commissioner after commencement of the Trial and Trial court after, considering material on record may pass necessary orders at appropriate stage without impeded by this order.

(S. G. CHAPALGAONKAR, J.)

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