



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

952 WRIT PETITION NO. 6940 OF 2025

Krushna Tukaram Shelke And Another
VERSUS
Dnyanoba Krushna Shelke And Others.

...
Advocate for Petitioners : Mr.R.P. Cheble
Advocate for Respondents 1-3 : Mr. S.V. Gundre
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CORAM : S. G. CHAPALGAONKAR, J.

Dated : April 01, 2026

PER COURT :-

1. Heard learned advocates appearing for the respective parties.
2. Present writ petition takes exception to the order dated 8.5.2025 passed by the learned Civil Judge J.D., Nilanga, District Latur in R.C.S. No.571 of 2024, whereby application Exhibit-15 filed by respondent/plaintiff seeking appointment of the Court Commissioner has been allowed.
3. Learned counsel appearing for petitioners submits that application for appointment of Court Commissioner was filed at nascent stage when issues in the suit are yet to be framed. Further, looking to nature of reliefs sought in suit to exercise jurisdiction under Order 26 Rule 9 of the Civil Procedure Code

was uncalled for. He would submit that impugned order amounts to permitting collection of evidence, which is not the object and purport of Order 26 Rule 9 of the CPC.

4. Per contra, Mr. Gundre, learned advocate appearing for respondents supports the impugned order.

5. Having considered submissions advanced, apparently, the suit is at nascent stage. Issues in the suit are yet to be framed. Perusal of impugned order do not suggests as to why trial court felt it necessary to exercise the jurisdiction under Order 26 Rule 9 of the Civil Procedure Code at this stage of suit. The suit is instituted for relief of declaration of ownership and perpetual injunction. In such a case, generally appointment of Court Commissioner would not be necessary, however, after recording of evidence of parties, if court finds it necessary to have evidence of an expert to assist Court in reaching to definite conclusion, such an exercise can be undertaken.

6. In that view of the matter, Writ Petition is **allowed**. Impugned order is quashed and set aside with liberty in favour of the respondents/ plaintiffs to file application for appointment of the Court Commissioner after recording of

evidence and on the basis of the material tendered into service before the Trial court. Trial Court shall be at liberty to pass further orders without impeded by this order.

(S. G. CHAPALGAONKAR, J.)

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AAA/-