

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5100 OF 2014

Pramod Shivdas Patil

..PETITIONER

VERSUS

Ashok Vishwanath Patil

..RESPONDENT

....
Mr. Mobin Shaikh, Advocate h/f Mr. V.R. Dhorde, Advocate for petitioner.
Mr. B.R. Warmaa, Advocate for respondent.
....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. The petitioner is aggrieved by the impugned order dated 25th February, 2013 by which application Exhibit 15 praying for appointment of the Court Commissioner has been rejected.

2. I have considered the strenuous submission of Mr. Shaikh, learned Counsel on behalf of the petitioner and Mr. Warmaa, learned Counsel on behalf of the respondent.

3. This Court has settled the law in catena of judgments that normally the Court Commissioner ought not to be appointed before the commencement

of the Trial. It is only in rare and peculiar circumstances that the Court Commissioner could be appointed by the Court before the Trial has commenced.

4. In the instant case, Regular Civil Suit No. 55 of 2013 was filed on 15th May, 2013. After the summer vacation, Application Exhibit 15 was filed. Issues were not framed and recording of evidence had not commenced. The impugned order indicates that the Trial Court has rejected the said application on the ground that the application filed was for seeking measurement of the suit land. It is trite law that when it is the case of the disputed boundaries, joint measurement of the properties of the litigating sides is advisable and it is necessary to fix the boundaries for the assistance of the Court. However, this exercise can be undertaken after the trial has commenced.

5. Considering the above, this petition is disposed of with liberty to the litigating sides that after the trial has commenced, to file an application for an appointment of the Court Commissioner. The Trial Court would consider the same on its own merits and without being influenced by the observations in the impugned order dated 25th October, 2013 since such an application at that stage was not to be entertained.

(RAVINDRA V GHUGE, J.)

SSD