

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

WRIT PETITION NO. 2110 OF 2017

Shivaji Gorakh Gaikwad & Anr. .. Petitioners

Versus

Navnath Eknath Jagtap & Anr. .. Respondents

Mr.V.M. Humbe, Advocate for the petitioners.

CORAM : S.B. SHUKRE, J.

DATED : 23.02.2017

P.C. :-

1. Heard learned Counsel for the petitioners. Perused the impugned orders dated 24.10.2016 below Exh.28 and Exh.39.

2. The suit has been filed for perpetual injunction simplicitor. There is no plea taken regarding encroachment and no prayer made for removal of any encroachment. In this circumstance, if the plaintiff says that the Court Commissioner be appointed to demarcate the boundaries and identify the defendant's land, the submission would be a plea made for collection of evidence and it has been rightly held so by the learned Civil Judge. Similarly, the matter of appointment of Court Commissioner is something which can be dealt

with by moving an application in that regard, if facts and circumstances of the case warrant so and it can not be a matter of pleading and therefore even the application for amendment of pleading has been rightly rejected by the learned Civil Judge.

3. There is no merit in the writ petition. The writ petition stands dismissed summarily with costs.

[S.B. SHUKRE, J.]