

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

34 WRIT PETITION NO.2130 OF 2020
MADHAV GIRDHAR GAWLE
VERSUS
GIRDHAR MADHAVRAO GAWLE AND ANOTHER

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Mr. K.T. Shirurkar, Advocate for the petitioner.

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CORAM : **Rohit B. Deo, J.**

DATE : 4th February 2020.

ORDER :-

. The petitioner is the plaintiff whose application for appointment of a learned Advocate as Court Commissioner to ascertain whether the construction done by the defendants on the suit property was before institution of the suit or during pendency of the suit, is rejected by the order impugned.

2. The plaintiff is the son of defendant 1 and the step brother of defendant 2. The suit is not for partition and the only prayer is of declaration and injunction. The defendants are not denying the construction. However, the defendants contend that the construction is done even prior to the institution of the suit. On the other hand, the plaintiff contends that the construction is done during pendency of the suit.

3. I do not see any error in the order impugned.
4. The evidence has not commenced. The date and age of the construction can be proved otherwise than by appointing learned Counsel as Court Commissioner. In any event, if after recording of the evidence is complete, the trial Court feels it necessary to appoint the Court Commissioner to elucidate the evidence on record, such course can be adopted on its own merits.
5. The petition is dismissed.

(ROHIT B. DEO, J.)

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