

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

WRIT PETITION NO.733 OF 2019

**CHAGAN SHANKAR PAKHARE
VERSUS
KALYAN BHAGWAT SUBHEDAR**

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Advocate for Petitioner : Mr. Amey Sabnis h/f Mr. V. D. Gunale
Advocate for Respondent : Mr. S. S. Manale

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th AUGUST, 2022

PER COURT :

1. This petition, filed under Article 227 of the Constitution of India, takes exception to the order dated 31/07/2018, passed by 3rd Joint Civil Judge, Junior Division, Latur, below Exhibit-20 in Regular Civil Suit No.287/2017, thereby appointing Court Commissioner.
2. Respondent is the original plaintiff who has filed the suit for possession and perpetual injunction. The petitioner defendant has resisted the suit by filing written statement. Immediately after filing of the written statement by defendant, application Exhibit-20 is filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure, seeking appointment of Court Commissioner, so as to ascertain the exact extent of encroachment. This application was resisted by the defendant. However, the trial Court allowed the application. Hence, the present petition.

3. Having heard the learned advocate for petitioner and learned advocate for respondent, and taking into consideration settled legal position that, in a suit for encroachment it is desirable to appoint Court Commissioner and also the settled legal position that Court Commissioner needs to be appointed after oral evidence is adduced by the parties, this Court is of the view that, since the Court Commissioner has already measured the land in question, report, if any, filed by the Court Commissioner shall be taken into consideration after conclusion of recording of oral evidence by the parties.

4. With these observations, writ petition is disposed of.

(NITIN B. SURYAWANSHI, J.)