

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

WRIT PETITION NO.5864 OF 2022

**PARVATIBAI ANNARAO DESHMUKH AND OTHERS
VERSUS
MANGLABAI VYANKAT PAWAR AND ANOTHER**

...
Advocate for Petitioners : Mr. S. N. Rodge h/f. Mr. Satish P. Dhobale

...

CORAM : MANGESH S. PATIL, J.

DATED : 22 JUNE 2022

PER COURT :

1. The petitioner is aggrieved by the rejection of his application seeking appointment of court commissioner to carry out measurement.
2. I have heard the learned advocate for the petitioners.
3. The petitioners are the original plaintiffs' seeking perpetual injunction and also praying for carrying out measurement for fixation of the boundaries. Even before the trial would begin and even before they step into witness box, they sought assistance of the court for appointing the court commissioner to carry out the measurement.
4. This Court has consistently held that a party has to first make an attempt to establish the facts and averments in the plaint and is not entitled to

seek assistance of the court, even before stepping into the witness box and the trial commences.

5. Though the learned Judge of the trial court has not referred to these decisions and is not coming out with the same reasoning, there is no illegality in the order refusing to appoint the court commissioner.

6. There is no merit in the petition, it is dismissed, keeping open the option to the petitioners to once again apply for appointment of commissioner at an appropriate stage.

(MANGESH S. PATIL, J.)