

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO.3538 OF 2016

RAMCHANDRA KHANDU KULKARNI
VERSUS
JAMBUWANTRAO GIRAJAPA SONKAWADE AND OTHERS

...
Advocate for Petitioners : Mr S.S. Thombre
Advocate for Respondent No. 2 : Mr S.S. Chillarge
Advocate for Respondent No. 3 : Mr Amol Bhagat h/f Mr H.V. Patil

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CORAM : SANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges order dated 11.03.2016 passed by the Civil Judge, Senior Division, Latur allowing plaintiffs' application for appointment of Court Commissioner under the provisions of Order 26 Rule 9 of Code of Civil Procedure. As on 11.03.2016, the Court Commissioner was directed to be appointed for measurement of land, the trial in the suit was yet to commence and the plaintiff was to elucidate his case by leading evidence. The present petition is an attempt by the plaintiff of collecting evidence by appointment of Court Commissioner. This Court vide order dated 30.03.2016 stayed execution of the order dated 11.03.2016. On account of stay granted by this Court, the Court Commissioner has not yet measured the land. However, in the meantime, trial of the suit is progressed. The learned counsel appearing for the respondents would submit that the plaintiff has already filed evidence and his cross-examination is under way.

2. In ***Shantaram Dattatray Kekan and others Vs. Bhausaheb Karbhari Kekan and anr in Writ Petition No. 14046 of 2021 decided on 05th December, 2022*** this Court, after considering various judgments on the subject, has held that there is no specific stage provided in the code when the Court Commissioner can be appointed for measurement of land or fixation of boundaries.

3. In the present case, on account of interim order granted by this Court, the evidence on behalf of the plaintiff is already adduced and his cross-examination is going on.

4. In such circumstances, the question of appointment of Court Commissioner can be considered once the plaintiff completes his evidence and elucidates his case. At that stage, if the trial court is of the view that appointment of Court Commissioner is necessary for the purpose of effective adjudication of dispute between the parties, the trial court can allow the application for appointment of Court Commissioner. I accordingly proceed to pass the following order :-

ORDER

- (i) The order dated 11.03.2016 passed by the Civil Judge, Senior Division, Latur is set aside.
- (ii) The plaintiff shall be at liberty to file application for appointment of Court Commissioner for measurement of land, fixation of boundaries and for determination of the extent of encroachment after the plaintiff completes his evidence. If such an application is filed, the trial court shall decide it on its own

merits without being influenced by the observations made in the order dated 11.03.2016 or in the present order.

- (iii) With the above directions, the writ petition is disposed of. No costs.

[SANDEEP V. MARNE, J.]

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