

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 WRIT PETITION NO.5685 OF 2018

LIMBRAJ GAYANDEO MUNDHE AND OTHERS
VERSUS
SHITARAM KHEMA GAIKWAD

...
Advocate for Petitioners : Mr Balbhim R. Kedar

CORAM : SANDEEP V. MARNE, J.

DATE : 22nd NOVEMBER, 2022

PER COURT :

1. By this petition, petitioners assail the order dated 16.03.2018 by which the plaintiffs application at Exh. 32 about the appointment of Court Commissioner for measurement of the land has been allowed.
2. This Court had issued notices in the present petition and despite service of the notices, none appears for the respondent.
3. The trial in the suit is yet to commence and none of the parties had laid their respective evidence. It is well settled principle that appointment of Court Commissioner cannot be sought for collection of evidence and that the Court may consider and allow application for appointment of Court Commissioner after the parties adduce evidence. The reference of the citation can be made to the Judgment of this Court in ***Dnyandeo Vithal Salke and others Vs. Dagdu Kadar Inamdar [2017 (3) Mh.L.J. 314]***.

4. Considering the above position, the order passed by the trial court is unsustainable. Accordingly, I proceed to pass the following order :-

ORDER

- (i) The order dated 16.03.2018 passed by the Civil Judge, Junior Division, Dharur is set aside. However, the plaintiff shall be at liberty to move an appropriate application for appointment of the Court Commissioner after parties adduce their respective evidence. Such application be decided on its own merits.
- (ii) With the above observations, the writ petition is partly allowed.

[SANDEEP V. MARNE, J.]

mta