

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

55 WRIT PETITION NO.5148 OF 2022

TRIMBAK NIVRUTTI KARKHELE AND ANOTHER
VERSUS
BABASAHEB VISHNU KARKHELE AND OTHERS

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Advocate for Petitioners : Mr. Wagh Umakant U.
Advocate for Respondent 1 : Mr. Nangare Prashant R.

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CORAM : SANDEEP V. MARNE, J.
Dated: November 21, 2022

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PER COURT :-

1. By this petition, petitioners have challenged the order dated 26.4.2022 passed by the Jt. Civil Judge J.D. Pathardi on application at exh.32 thereby allowing the application for appointment of the Court Commissioner for measurement of the land.

2. Admittedly, the trial in the suit is yet to commence. In fact, issues are yet to be framed. There has been consistent view taken by this Court in **Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade and others**, Writ Petition No.6497 of 2009 decided on 14.3.2011, **Ramkrishna Santu Kakad Vs. Reojee Sahadu Kakad**, Writ Petition No.2749 of 2012 decided on 4.3.2013, **Chandrakant Kashinath Dike Vs. Smt. Satyabhama Vishwanath Dike**, Writ Petition

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No.8877 of 2013 decided on 17.1.2014 and **Balkrishna Gangabishanji Zawar Vs. Azmat Khan Suban Khan**, Writ Petition no.8608 of 2012 decided on 27.09.2016 repeatedly holding that Court Commissioner cannot be appointed so as to assist the plaintiff in collecting the evidence. Court Commissioner can be appointed after evidence of both parties is completed. This view is reiterated by this Court in **Revji Namdeo Shinde and another Vs. Sopan Manaji Shinde and another in Writ Petition no.2864 of 2017** decided on 30.7.2018, in which it is held in paragraph no.4 as under :-

“4. The view consistently taken by this Court in the matter of Chandrakant Dike (supra), was not cited before this Court in the matter of Balkrishna Zawar (supra). Consequentially, the view taken by this Court with regard to the refusal of appointment of a court commissioner before commencing the recording of oral evidence, was not cited.”

3. Learned counsel for respondent relied upon the order of this Court in **Sunita Ashok Kachre and another Vs. Shantaram Babasaheb Kachre** in writ petition No.6541 of 2017 decided on 6.7.2017. The decision is rendered in the facts of that case, wherein this Court has arrived at finding
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that appointment of court commissioner in that case would assist the court in effectively deciding the suit. As against this, very first prayer of the plaintiff in his suit is to measure the land through Deputy Superintendent of Land Records, Pathardi. Said prayer in the suit is virtually granted by the impugned order dated 26.4.2022.

4. In view of the law consistently laid down by this Court, the order dated 26.4.2022 cannot be sustained. The same is set aside. Plaintiff shall, however, have a liberty of filing the application for appointment of the Court Commissioner for measurement of the land; once the evidence of both the parties is closed. Writ petition is accordingly partly allowed. Writ Petition is accordingly disposed off. No costs.

(SANDEEP V. MARNE, J.)

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