

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

WRIT PETITION NO.7524 OF 2019

**SHARAD MADHAV GADEKAR
VERSUS
VITHAL KARBHARI GADEKAR AND OTHERS**

...
Advocate for Petitioner : Mr. Sanket S. Kulkarni
Advocate for Respondent Nos. 1 to 3 & 12 : Mr. D. R. Adhav
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st SEPTEMBER, 2022

PER COURT :

1. This petition impugns order dated 25/01/2019, passed by learned 2nd Joint Civil Judge, Junior Division, Rahata below Exhibit-7 in Regular Civil Suit No.132/2018, thereby allowing application filed by respondents – plaintiffs for appointment of Court Commissioner.
2. Admittedly, suit is filed by respondent Nos. 1 to 3 for permanent injunction and possession of encroached portion of suit property, on 25/04/2018. On the same day, plaintiffs filed application Exhibit-7 seeking appointment of Court Commissioner. By the impugned order said application is allowed.
3. Application filed by plaintiffs is premature and could not have been allowed by trial Court at preliminary stage. This Court

has consistently taken a view that application for appointment of Court Commissioner has to be filed after conclusion of oral evidence of the parties. Impugned order, therefore, cannot be sustained and the same is hereby quashed and set aside.

4. Writ petition is allowed in terms of prayer clauses 'B' and 'C'. Parties are at liberty to file application for appointment of Court Commissioner after conclusion of oral evidence. At that time, trial Court shall consider the same on merits without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)

SVH