

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9248 OF 2017

SANJAY DAMUAPPA SHIVPUJE
VERSUS
BHAGIRTHIBAI VAIJNATH CHATE

...

Advocate for Petitioner : Mr. R.B. Deshpande
Advocate for Respondent: Mr. B.R. Kedar

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th AUGUST, 2022

ORDER :

1. The order passed by the learned Civil Judge, Junior Division, Ahmedpur, below Exhibit-25 in Regular Civil Suit No. 53/2016 is under challenge in the present petition. By the impugned order Trial Court has appointed court commissioner to inspect the suit property and submit his report.

2. Admittedly, application seeking appointment of court commissioner is filed at a preliminary stage. Application Exhibit-5 is yet to be decided and issues are yet to be framed. In this situation, taking into consideration the settled legal position that the court commissioner should not be appointed before oral evidence of the parties is concluded, the impugned order cannot be sustained. In the result, following order:

ORDER

- I) The writ petition is allowed.
- II) The impugned order 03.07.2017 passed below Exhibit-25 in Regular Civil Suit No. 53/2016 by the learned Civil Judge, Junior Division, Ahmedpur, is hereby quashed and set aside.
- III) The parties are at liberty to apply for appointment of court commissioner after oral evidence of the parties is concluded. If such application is made at that time, the Trial Court shall consider it on merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI, J.]