

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

WRIT PETITION NO.12496 OF 2022

POPAT KUSHABA SATPUTE AND ANOTHER
VERSUS
PRAVIN MANILAL PATEL AND OTHERS

...

Mr. Anil S. Bajaj, Advocate for the Petitioners.

Mr. S. B. Pulkundwar, Advocate for Respondent Nos.10 and 11.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 09th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioners challenge the order dated 24.03.2022 passed by the 2nd Joint Civil Judge, Senior Division, Sangamner rejecting his application for appointment of Court Commissioner for measurement of the land and fixation of boundaries under the provisions of Order 26 Rule 9 of the Code of Civil Procedure, 1908.

2. The main prayer in the suit is for measurement of the suit property and fixation of boundaries. There is also prayer for removal of encroachment, if found consequent to such measurement as well as prayer for injunction. The application for temporary injunction is still pending. At such a stage before plaintiff would elucidate his case by adducing evidence, application for appointment of Court Commissioner was moved on 15.03.2021 stating that measurement of land to Court Commissioner would put an end to the entire controversies between the parties. Thus appointment of Court Commissioner is clearly with the objective of collecting evidence to buttress the

case of plaintiff in suit. It is trite that the Court Commissioner cannot be appointed in order to enable parties to the suit to collect the evidence.

3. The order passed by the Trial Court does not suffer from any infirmity. The petition is devoid of merits and the same is dismissed without any orders as to cost. However, petitioner/plaintiff shall be at liberty to file application for appointment of Court Commissioner, if necessary, after elucidating his case by adducing evidence. In the event of such application being filed, the same shall be decided by the Trial Court without being influenced by its order dated 24.03.2022 or by the present order.

(SANDEEP V. MARNE)
JUDGE