

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

930 WRIT PETITION NO.12181 OF 2022

ARJUN TULSHIRAM DHADGE AND OTHERS
VERSUS
SWAPNIL BABASAHEB DHADGE AND OTHERS

...
Advocate for Petitioners : Mr. Yuvraj Vijayrao Kakde

...
CORAM : SANDEEP V. MARNE, J.
DATE : 05-12-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 04.07.2022 passed by Jt. Civil Judge Senior Division, Ahmednagar rejecting his application for appointment of Court Commissioner for measurement of the land.

2. The suit is filed for a declaration that the plaintiffs are in possession of the suit property and for consequential reliefs. The plaintiffs are yet to lead their evidence and to elucidate their case before the trial court. Before leading evidence, the application for appointment of Court Commissioner is moved so as to prove plaintiffs possession over the suit property. This in my view is an attempt to collect evidence. Plaintiffs have to first discharge their burden of proving their possession over the property by leading evidence. It is well settled position in law that the Court Commissioner cannot be appointed to collect evidence.

3. The learned counsel for petitioner has relied upon judgment of this Court in **Mohd. Hashim Ajmullah Khan vs. Vasiullah Nasibullah Khan and others**, [2014 (3) Mh.L.J. 451]. However, perusal of the said judgment indicates that the trial Court therein had decided the issue of ownership in a suit seeking declaration for protection of possession. The stage at which the application for appointment of Court Commissioner was filed is not clear in that judgment. Therefore the judgment is clearly distinguishable.

4. In the result, the following order is passed.

ORDER

- (i) The writ petition is dismissed.
- (ii) The petitioners shall however be at liberty to file an appropriate application for appointment of Court Commissioner after recording of evidence of petitioners - plaintiffs is over. If such application is made, the same shall be decided by the trial Court strictly on its own merits without being influenced by either order dated 04.07.2022 or by the present order.

(SANDEEP V. MARNE, J.)