

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

WRIT PETITION NO.165 OF 2019

DIGAMBAR BHURAO GHODKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Ubale Mahesh B.
AGP for Respondents/State: Mr. Y. G. Gujrathi
Advocate for Respondent Nos.5 to 8: Mr. S. C. Yeramwar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th August, 2022

PER COURT :-

1. The petitioner is aggrieved by the order dated 13-04-2018, passed by the learned Civil Judge, Senior Division, Parbhani, below Exhibit-34 in Regular Civil Suit No.82/2016, thereby rejecting the application filed by the petitioner under Order 26 Rule 9 of the Code of Civil Procedure, for appointment of Court Commissioner.
2. Admittedly, the suit is at a preliminary stage and only issues have been framed. The parties are yet to lead evidence. This Court has consistently taken a view that the appointment of Court Commissioner can be ordered after conclusion of oral evidence. In that view of the matter, this Court is not inclined to interfere with the impugned order at this stage.

3. Taking into consideration the fact that the present suit is for removal of encroachment, and in view of the settled legal position that in the suit for encroachment, appointment of Court Commissioner is desirable, the parties are at liberty to move an application for appointment of Court Commissioner after conclusion of oral evidence. If such application is filed, the same shall be considered by the Trial Court in view of the settled legal position on merits.

4. With this direction, writ petition is disposed of.

[NITIN B. SURYAWANSHI, J.]

Sameer