

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

WRIT PETITION NO.11711 OF 2021

**MAULI MANGAL KARYALAYA PROPRIETOR PRADIP SUNDARRAO
CHAUHAN
VERSUS
SHAM PADMANABH KASHIKAR AND OTHERS**

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Advocate for Petitioner : Mr. Shailendra S. Gangakhedkar
Advocate for Respondents No.1, 4 & 5 : Mr. Y. P. Deshmukh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th JULY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 07/09/2021 passed by the learned Joint Civil Judge Senior Division, Parbhani below Exhibit-39 in Special Civil Suit No.40/2017, thereby allowing the application filed by the respondents/original plaintiffs for appointment of Court Commissioner.
2. Having heard the learned advocate for petitioner and the learned advocate for respondents and after perusing the record, it is clear that the present application under Order 26 Rule 9 of the Code of Civil Procedure is filed by the respondents/plaintiffs after the issues are framed and after he filed his affidavit-in-lieu of examination-in-chief on record, seeking appointment of Court Commissioner to measure the suit property.
3. Learned advocate for petitioner vehemently contended

that the respondents/plaintiffs are trying to collect the evidence by way of appointment of Court commissioner.

4. Learned advocate for respondents, on the other hand, supported the impugned order.

5. Admittedly, the suit is filed for removal of encroachment. It is a settled legal position that in a suit for removal of encroachment the Court Commissioner's report help the trial Court to effectively decide the dispute between the parties. No prejudice is likely to be caused to the petitioner in case the Court Commissioner is appointed in terms of the order passed by the trial Court.

6. In that view of the matter, this Court does not find any illegality or perversity in the order impugned in the present petition. Writ petition being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)