

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

941 WRIT PETITION NO.10519 OF 2022

**ASHOKKUMAR BANSILAL PALLOD AND OTHERS
VERSUS
HITEN SHAILESH SARAF THROUGH ITS POWER OF ATTORNEY
SHAILESH MAHESHCHANDRA SARAF**

...
Advocate for Petitioners : Mr. Nikhil S. Jaju h/f Mr. Palod Lalitkumar
Bansilal

Advocate for Respondent : Mr. Lahrimanohar L. Vakil

...

CORAM : SANDEEP V. MARNE, J.

DATE : 13.10.2022.

PER COURT :

1. By this petition, the petitioners challenge the orders dated 15.09.2022 and 19.09.2022 passed by the Civil Judge, Junior Division, Paithan, District Aurangabad on application below Exh. 8 and Exh. 34 filed in RCS No. 265 of 2021.

2. By order dated 15.09.2022, the Court below has appointed TILR, Paithan as the Court Commissioner to conduct joint measurement of the property. Since there was error in recording of plot number, a correction was made to the order by passing another order on 19.09.2022.

3. learned Advocate Mr. Jaju, holding for Mr. Palod

appearing for the petitioners submits that it is settled position of law that the Court Commissioner cannot be appointed in order to assist the plaintiff to collect evidence.

4. He relies upon the decisions of this Court in :

a. Shantabai Pralhad Anantwad Vs. Tahsildar Tahsil Office, Latur and Others Writ Petition No. 1096 of 2018 decided on 31.01.2018.

b. Murlidhar Govind Wani and Others Vs. Tryambak Dagadu Kohe and Others Writ Petition No. 10292 of 2019 decided on 21.08.2019.

c. Dnyandeo Vithal Salke and Ors. Vs. Dagdu Kadar Inamdar 2017 (9) LJSOFT 131.

5. It has been repeatedly held in various decisions of this Court as well as by the Apex Court that the Court Commissioner cannot be appointed before the recording oral evidence is concluded. It is common ground that the trial in the suit is yet to be commenced. Following orders of this Court, the impugned orders cannot be sustained and are liable to be set aside.

6. The present petition succeeds. The orders dated 15.09.2022 and 19.09.2022 passed by the Civil Judge, Junior Division, Paithan below Exh. 8 and Exh. 34 in RCS No. 265 of 2021 are set aside. However, this would not preclude the plaintiff to move

an appropriate application for appointment of the Court Commissioner, if advised, after conclusion of oral evidence in the suit.

(SANDEEP V. MARNE)
JUDGE

mahajansb/