

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

WRIT PETITION NO. 12687 OF 2022

Indrajit Laxman Katle

.. Petitioner

Versus

Janardhan Manohar Katle

.. Respondent

Shri Ganesh L. Kedar, Advocate for the Petitioner.

CORAM : SANDEEP V. MARNE, J.

DATE : 13TH DECEMBER, 2022.

FINAL ORDER :

. Petitioner challenges order dated 03rd September, 2022 passed by the Joint Civil Judge Junior Division, Renapur rejecting application for appointment of Court Commissioner for measurement of land through Deputy Superintendent of Land Records.

2. The suit is for injunction simplicitor to restrain the defendant from interfering in the alleged possession over the suit property by the plaintiff. Though initially temporary injunction was clamped on the defendant by the Trial Court by order dated 12.12.2019, the District Court reversed the order of the Trial Court on 17.02.2022.

3. The trial in the suit is yet to commence and the plaintiff is yet to elucidate his case by adducing evidence. It is well settled

principal of law that Court Commissioner cannot be appointed to enable the parties to collect the evidence.

4. However, there is a unique circumstance in the present case, wherein the defendant himself stated in para No. 9C of his written statement as under :

"c) That, the defendant is in actual possession over the land adm. 2H 21R in gat no. 30 though less area has been recorded to the revenue record gat no. 30 in the name of father of defendant and thereafter in the name of defendant as such to ascertain exact area which is in physical possession of defendant towards east side of nala. Which is by furcating the land of plaintiff and defendant the defendant is ready to got measured the land by appointing court commissioner i.e. T.I.L.R. not only this the defendant request to this Hon'ble court, court commissioner may kindly be appointed to bring the factual position of Nala which is lying in south north direction and electric poles their in on record. The defendant is submitting rough sketch map of actual situation of land gat no. 29 and 30 and location of Nala between their land and standing electric pole therein for kind perusal of the Hon'le court along with W.s. which may be treated as part and parcel of W.S."

5. Furthermore, the defendant himself had filed an application for appointment of Court Commissioner at Exhibit 32, which was rejected by the Trial Court. When the plaintiff filed his application for appointment of Court Commissioner, defendant showed willingness for the same.

6. Considering the above position, it may be appropriate that once the plaintiff elucidates his case by leading evidence, the

Trial Court would consider his request for appointment of Court Commissioner. While considering such a request of the plaintiff/petitioner, the Trial Court would obviously take into consideration willingness expressed by the defendant for appointment of such Court Commissioner both in the written statement as well as while opposing application filed by the plaintiff.

7. Reserving a liberty to the petitioner/plaintiff to file an application for appointment of Court Commissioner after elucidating his case by adducing evidence, the writ petition is disposed of. However, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

bsb/Dec. 22