

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

**WRIT PETITION NO. 12283 OF 2022**

Manik Vishwanath Tekale  
and others

.. Petitioners

**Versus**

Shankar Kashinath Tekale  
and others

.. Respondents

Shri N. L. Jadhav, Advocate for the Petitioners.

**CORAM : SANDEEP V. MARNE, J.  
DATE : 07TH DECEMBER, 2022.**

**FINAL ORDER :**

. Petitioners challenge order dated 18.08.2022 passed by the Civil Judge Junior Division, Ashti rejecting the application filed by them (defendants) for appointment of Court Commissioner for measurement of the land.

2. Though the trial in the suit has commenced and so far only plaintiff is in the process of leading evidence, the defendants are yet to adduce their evidence and elucidate their case before the Trial Court. Therefore, application filed by the defendants for appointment of Court Commissioner for measurement of land was clearly premature. Though no specific stage is specified under the provisions of Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner, the facts and circumstances of the present case are such that

unless the defendants elucidate their case by leading their own evidence, appointment of Court Commissioner is clearly unwarranted.

3. Accordingly the writ petition is dismissed. The defendants will however be at liberty to file an application for appointment of Court Commissioner for measurement of land and only in the event of the Trial Court requiring any clarification about the boundaries of the land, it will decide such an application on its own merits without being influenced either by order dated 18.08.2022 or by the present order. There shall be no order as to costs.

**[SANDEEP V. MARNE, J.]**

*bsb/Dec. 22*