

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

WRIT PETITION NO.634 OF 2019

**RUKHMINABAI Wd/o PRAKASH JAMDADE
VERSUS
GANGARAM AMRUTA DHAGE AND OTHERS**

...
Advocate for Petitioner : Mr. U.M. Mhaske, Advocate h/f
Mr. Shahaji B. Ghatol Patil
Advocate for Respondent Nos. 1 to 8 : Mr. D.S. Patil, Advocate h/f
Mr. S. S. Gangakhedkar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17TH APRIL, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 16/07/2018, passed by learned Civil Judge, Junior Division, Hadgaon, below Exhibit-15 in Regular Civil Suit No.131/2017, thereby allowing application filed by plaintiffs/respondents for appointment of Court Commissioner for measurement of the suit property.

2. Having heard learned advocates for the respective parties and after going through the memo of writ petition, annexures thereto and the impugned order, I am of the opinion that impugned order cannot be sustained.

3. Admittedly, said application is filed at a premature stage, even before framing of issues and commencement of recording of evidence. This Court has taken a consistent view that

appointment of Court Commissioner cannot be made before commencement of recording of evidence. In that view of the matter, writ petition is allowed. The impugned order is quashed and set aside.

4. Parties are at liberty to move application under Order 26 Rule 9 of the Code of Civil Procedure after commencement of recording of evidence. If at that stage such application is made, trial Court shall consider the same on it's own merit without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)