

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2463 OF 2016

Ramrao S/o Devidas Kadam

.... Petitioner

Versus

Lahu Pralhad Kadm
and others

.... Respondents

.....

Mr. V.V. Bhavthankar, Advocate for the Petitioner

Mr. P.B. Kadam, Advocate for Respondent No.1,2, 4 and 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 07th September , 2023

ORDER :

1. Order passed by the learned 3rd Joint Civil Judge, Junior Division, Ambajogai, below Exhibit-49 in Regular Civil Suit No.121 of 2009 is questioned in the present petition.

2. Petitioner/plaintiff filed suit for recovery of possession of encroached portion and perpetual injunction, contending that defendants have encroached on 60 R land of the plaintiff. Defendants opposed the suit by filing written statement. After framing of issues, petitioner plaintiff filed application Exhibit-49, for appointment of Taluka Inspector of Land Record as Court Commissioner for measurement of the suit property. Defendants opposed the application, the Trial

Court has rejected it. This order is impugned in the present petition.

3. Heard the learned advocate for the petitioners and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and the impugned order.

4. Perusal of the impugned order shows that the Trial Court has rejected the application on the ground that plaintiff has not come before the Court with specific pleadings of encroachment, and the plaintiff is trying to collect evidence.

There are specific pleadings in the plaint that defendants have encroached on 60 R land of the plaintiff.

5. The Trial Court has ignored the settled legal position that in the suit for encroachment, it is desirable to appoint the Court Commissioner. The impugned order is therefore unsustainable in the facts of the present case.

6. However, it is also well settled by catena of decisions of this Court that application for appointment of Court Commissioner cannot be entertained at premature stage. This Court, at this stage, therefore is not inclined to interfere in the

impugned order. The writ petition is therefore disposed of with liberty to the petitioner file application for appointment of Court Commissioner, after conclusion of recording of evidence. At that stage, if such application is preferred, the same shall be decided on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane