

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

WRIT PETITION NO.3507 OF 2023

**SHRI VISHAL RAMESHWAR TODKAR
VERSUS
CHABUBAI GOPINATH TODKAR**

...

Advocate for Petitioner : Ms. Rakhi V. Sundale
Advocate for Respondent : Mr. Ravindra M. Deshmukh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th AUGUST, 2023

PER COURT :

1. Appointment of Court Commissioner at premature stage is challenged in the present petition.
2. Respondent/plaintiff filed Regular Civil Suit No.240/2022 for removal of encroachment against petitioner/defendant. Before the parties adduce their evidence, application Exhibit-12 seeking appointment of Court Commissioner, filed by the plaintiff, is allowed by the Trial Court.
3. It is consistently held by this Court that appointment of Court Commissioner normally should not be made before the parties adduce their evidence.
4. Admittedly, in the present case the evidence of the parties is yet to be recorded. In that view of the matter, the impugned order deserves to be quashed and aside.

5. In the result, writ petition is allowed.
6. Impugned order dated 06/02/2023, passed by learned Joint Civil Judge, Junior Division, Ghansawangi, below Exhibit-12 in R.C.S. No.240/2022, is quashed and set aside. Application Exhibit-12 is rejected, with liberty to the parties to move application for appointment of Court commissioner, after conclusion of recording of evidence of the parties. If such application is filed by either party, the same shall be considered on it's own merit, without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)