

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

WRIT PETITION NO.4265 OF 2022

**SAHEBRAO RAGHUNATH PATIL AND OTHERS
VERSUS
RAVSAHEB KASHINATH PATIL AND OTHERS**

...

Advocate for Petitioners : Mr. Vishnu Y. Patil
Advocate for Respondent Nos. 1 to 4 : Mr. B. R. Jaybhay

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JUNE, 2023

PER COURT :

1. Petitioners impugn the order dated 09/03/2022, passed by learned Joint Civil Judge, Junior Division, Bhokardan, below Exhibit-5 in Regular Civil Suit No.40/2021, thereby allowing application filed by respondents/plaintiffs for appointment of Court Commissioner.
2. Respondents/plaintiffs filed the suit for removal of encroachment and for appointment of Court Commissioner to ascertain the extent of encroachment. The suit is filed on 23/02/2021. Along with the suit, Exhibit-5 application is filed seeking appointment of Court Commissioner for measurement of the encroached portion. The said application was opposed by defendant Nos.1 to 4 by filing written say. The Trial Court has allowed the application and appointed Deputy Superintendent of

Land Record, Bhokardan, for measurement of suit property and the property of defendants to ascertain whether there is encroachment in the suit property. This order is impugned in present petition.

3. Heard learned advocate for petitioners and learned advocate for respondent Nos.1 to 4. Perused the memo of writ petition, annexures thereto, the impugned order and citations relied upon by the learned advocate for petitioners.

4. It is consistently held by this Court that appointment of Court Commissioner should not be made at initial stage. Parties should establish their *prima facie* case and then after commencement of recording of evidence and/or on conclusion of the same, Court Commissioner may be appointed (vide orders passed in Writ Petition Nos.11593/2015, 4958/2018 and the order passed in Writ Petition No.1196/2017, at Principal Seat).

5. Obviously, the impugned order of appointment of Court Commissioner is passed at a premature stage and in the light of the observations made in the above referred orders, the impugned order is unsustainable.

6. In the result, writ petition is allowed. Impugned order dated 09/03/2022, passed below Exhibit-5 in Regular Civil Suit No.40/2021, is hereby quashed and set aside.

7. Parties are at liberty to seek appointment of Court Commissioner after conclusion of recording of oral evidence. If such application is filed, the 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.)