

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5431 OF 2023

Punja Jijaba Nawale And Another ...Petitioners

Versus

Dinkar Sopan Vaidya And Others ...Respondents

Mr. Vinod Bhide, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th JUNE, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by learned Joint Civil Judge Junior Division, Akole, below Exhibit-18 in Regular Civil Suit No. 159/2020, thereby rejecting the application filed by the petitioners/plaintiffs under Order 26 Rule 9 of Code of Civil Procedure.

2. The plaintiffs filed suit for removal of encroachment and possession of encroached portion and at a premature stage filed application seeking appointment of court commissioner to ascertain the exact area of encroachment. The Trial Court has rejected the application by relying on *Sanjay Namdeo Khandre Vs. Sahebrao Kachru Khandare* (2001 (2) Mh.L.J. 959).

3. It is settled legal position that application for appointment of court commissioner is not to be entertained at a premature stage. Admittedly, in the present case application for appointment of court commissioner is filed at a premature stage. However, the Trial Court has not rejected the application on that ground but rejected it by relying on the citation referred above.

4. In Sanjay Khandre (supra), in the facts of that case, this Court was of the view that appointment of Court Commissioner tantamounts to collecting evidence regarding possession, and therefore, order of appointment of court commissioner was set aside. Said decision is rendered in different facts and is not applicable to the case in hand.

5. Apart from above, since, in the present case application for appointment of court commissioner is filed at initial stage, same ought to have been rejected on that ground alone. This Court has consistently taken a view that application for appointment of court commission cannot be entertained at a initial stage. In that view of the matter, this Court is not inclined to interfere in the order impugned in the present petition at this stage.

6. The writ petition is therefore disposed of by granting liberty to the parties to move application for appointment of court commissioner after commencement of recording of evidence.

[NITIN B. SURYAWANSHI, J.]