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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8215 OF 2023

Chandraprabha Namdeo Magre

PETITIONER

VERSUS

Kamalbai Girjaba Bankar and Others

RESPONDENTS

.....
Mr. Rajendra N.Magre, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th JULY, 2023

ORDER :

1. The petitioner is aggrieved by order passed by learned Civil Judge, Senior Division, (Corporation Court), Aurangabad, thereby rejecting the application filed by the petitioner for appointment of the Court Commissioner.
2. According to the petitioner, the respondents have encroached on more than 6 feet area of the petitioner's land and to ascertain the exact encroachment, appointment of the Court Commissioner is necessary.
3. Heard learned advocate for the petitioner. Perused the memo of writ petition, the documents annexed along with it and the impugned order.

4. While rejecting the application, learned Trial Court has quoted the order passed by this Court in "**Sanjay Balasaheb Kanakdande v/s Vivek Surinder Mahajan and Another**" as follows:

"3. I find that this Court has consistently taken a view that a court commissioner should not be appointed until recording of oral evidence is concluded.

6. Needless to state, after recording of oral evidence is concluded, if either of the sides prefer an application for seeking appointment of a court commissioner, the Trial Court would consider the said application on its own merits"

5. Admittedly, so far, only application Exhibit-5 is decided and recording of evidence is yet to begin.

6. There is no illegality or perversity in the order impugned in the present petition. The Trial Court has observed that after parties conclude their evidence, the request for appointment of Court Commissioner can be considered.

7. In view of aforesaid, no case is made out by the petitioner to exercise extraordinary writ jurisdiction. Writ petition is, therefore, dismissed, with liberty to the petitioner to move such application after conclusion of recording of oral evidence.

[NITIN B. SURYAWANSHI]
JUDGE