

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

WRIT PETITION NO.6051 OF 2023

**GOPINATH PHULAJI PAWAR
VERSUS
SITARAM HARISHCHANDRA PAWAR**

...

Advocate for Petitioner : Mr. Mahesh P. Kale
Advocate for Respondent : Mr. Subhash V. Mundhe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th AUGUST, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 02/05/2023, passed by learned Civil Judge, Junior Division, Sonpeth, below Exhibit-10 in Regular Civil Suit No.49/2022, thereby allowing application filed by the respondent for appointment of Court Commissioner.
2. The suit is filed by respondent/plaintiff for injunction and demarcation of boundaries of the suit property. Petitioner has challenged the impugned order on the ground that application for appointment of Court Commissioner is premature and plaintiff should have filed counter claim in the suit filed by petitioner i.e. R.C.S. No.71/2021 for injunction.
3. Having heard learned advocate for petitioner and learned advocate for respondent and on going through the writ petition memo and the impugned order, this Court is of the view

that no illegality or perversity is found in the order impugned in present petition.

4. Admittedly, the suit is for fixation of boundaries and injunction. In that view of the matter Trial Court has rightly appointed Taluka Inspector of Land Record, Sonpeth, as Court Commissioner to measure the suit property for fixing the boundaries. Court Commissioner's report will enable the Trial Court to effectively decide the lis between the parties.

5. Even if the order impugned in present petition can be claimed to be premature, this Court is not inclined to exercise the discretion in favour of petitioner. Hence, the writ petition is dismissed.

6. Considering the fact that the suit filed by petitioner i.e. R.C.S. No.71/2021 and the present suit bearing R.C.S. No.49/2022 are pending before the same Court, both the suits be clubbed together and decided simultaneously by recording evidence.

(NITIN B. SURYAWANSHI, J.)