

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

WRIT PETITION NO.6074 OF 2023

**RAMESH SHYAMRAO SAPKALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR AND
OTHERS**

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Advocate for Petitioner : Mr. Pramod P. Dhorde
AGP for Respondent Nos. 1 to 4 : Mr. P.N. Kutti

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th JUNE, 2023

PER COURT :

1. Petitioner/original plaintiff is aggrieved by the order dated 11/04/2023, passed by learned Civil Judge, Senior Division, Jalgaon, below Exhibit-109 in Regular Civil Suit No.433/2014, thereby appointing Court Commissioner for joint measurement of the suit property, at the instance of defendant No.5 i.e. respondent No.5 herein.

2. Plaintiff has filed suit for declaration and mandatory injunction. The defendants appeared and resisted the suit. Presently the evidence of plaintiff is over and at this stage defendant No.5 filed application Exhibit-109 seeking joint measurement. Plaintiff opposed the said application by filing say. Trial Court allowed the said application. Hence, the present petition.

3. Heard learned advocate for petitioner and learned Additional Government Pleader for respondent Nos.1 to 4. Perused the memo of writ petition, annexures thereto and the impugned order.

4. It appears from record that plaintiff has found fault with the earlier measurement carried out in the year 2014. Trial Court has held that this is an opportunity extended by defendant No.5 to the plaintiff for carrying out joint measurement and it would help the trial Court to effectively adjudicate the lis between the parties.

5. There is no substance in the contention of petitioner that the impugned order is passed at premature stage. To support this submission, learned advocate for petitioner has relied upon ***Shantaram Dattatray Kekan and Others Vs. Bhausahab Karbhari Kekan and Others, 2023 (2) Mh.L.J. 77.*** In the said decision, learned Single Judge of this Court, by relying on the earlier orders passed by this Court, held that application filed by the party therein was at a premature stage and Court Commissioner cannot be appointed to enable the parties to collect evidence. It is further held that appointment of Court Commissioner for measurement of land either for fixation of boundaries or for determination of possession, ideally should be done only after parties make out a case by recording evidence.

6. Admittedly, in the present case recording of evidence is in progress and plaintiff's evidence is over. In that view of the matter, it cannot be said that the application was filed at a premature stage.

7. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI, J.)