

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9091 OF 2023

Kusum W/o Ramrao Patil
and another

.... Petitioners

Versus

Madhav S/o Shankarrao Patne
and others

.... Respondents

.....
Mr. S.B. Bhapkar, Advocate for the Petitioners

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th JULY, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by Learned 3rd Joint Civil Judge, Senior Division, Nanded, below Exhibit-31 in Regular Civil Suit No.71 of 2022, thereby rejecting the application filed by the petitioner for appointment of Court Commissioner.

2. Suit is filed by the petitioner for declaration of ownership and perpetual injunction as well as demarcation of suit property and fixation of boundaries. Temporary injunction is granted in favour of the petitioner. Thereafter, before framing of issues, application Exhibit-31 is filed by the

petitioner seeking appointment of Court Commissioner. The defendants claimed in the written statement that though there is encroachment, the same is not made by them.

3. Having heard the learned advocate for the petitioner and on perusal of the memo of writ petition, annexures and impugned order, this Court is of the opinion that the application filed by the petitioner is premature, it is consistently held by this Court that application for appointment of Court Commissioner should be considered after conclusion of recording of evidence.

4. Admittedly, present application is premature and hence this Court is not inclined to interfere in the impugned order rejecting the application. The writ petition being devoid of merit is dismissed with liberty to the petitioners to move application for appointment of Court Commissioner after recording of evidence is concluded in the Trial Court. At that stage, if such application is preferred, the same shall be decided on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE