

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

WRIT PETITION NO.7093 OF 2023

KISANRAO KASHINATH JADHAV AND ANOTHER
VERSUS
KISAN ALIAS KISANSINGH HARAISINGH DUMALE AND ANOTHER

...
Mr. Avishkar S. Shelke, Advocate for the Petitioners.

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th JUNE, 2023.

P.C:-

1. The petitioners are aggrieved by the order passed by the Joint Civil Judge, Junior Division, Vaijapur below Exhibit-14 in Regular Civil Suit No.299/2022, thereby rejecting the application filed by the petitioners under Order 26 Rule 9 of Code of Civil Procedure for appointment of the Court Commissioner to measure the lands of the plaintiffs and defendants.

2. Heard the learned advocate for the petitioners. Perused the memo of writ petition, annexures thereto and the impugned orders.

3. There is specific pleading of the petitioners/plaintiffs in the plaint that the defendants broke East-West common bandh of the suit property. In the written statement, the defendants have disputed the boundaries mentioned by the petitioners in the

plaint. In that view of the matter the petitioners moved an application for appointment of the Court Commissioner. Fact remains that the application was filed at the premature stage. Parties are yet to lead their evidence to prove their respective contentions. A consistence view is taken by this Court that appointment of the Court Commissioner should not be made before recording of the evidence of parties is concluded. In that view of the matter, this Court is not inclined to interfere in the impugned order at this stage.

4. The petitioners are at liberty to file application for appointment of the Court Commissioner after conclusion of recording of the evidence. If such application is filed, the Trial Court shall consider it on merits without being influenced by the order impugned in the present petition.

5. With these observations, writ petition is disposed of.

(NITIN B. SURYAWANSHI)
JUDGE