

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

WRIT PETITION NO.8489 OF 2022

**SHIVAJI NATHA VAIDYA AND OTHERS
VERSUS
SHANKAR NATHA VAIDYA AND OTHERS**

...
Advocate for Petitioners : Ms. Manjushri V. Narwade
Advocate for Respondent Nos. 1 to 5 : Mr. Dilip B. Rode
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th MARCH, 2023

PER COURT :

1. By this petition, filed under Article 227 of the Constitution of India, petitioners impugn the order dated 13/07/2022, passed by learned Joint Civil Judge, Junior Division, Shrigonda, below Exhibit-5 in Regular Civil Suit No.188/2019, thereby allowing the application filed by respondents/original plaintiffs for appointment of Court Commissioner.

2. It is not in dispute that suit is filed by the plaintiffs for measurement of the suit land through Deputy Superintendent of Land Record, Shrigonda and for fixing of the boundaries in accordance with the measurement.

3. In the application seeking appointment of Court Commissioner (Exhibit-5) same prayer is made that Court Commissioner should measure the land as per the map submitted

along with the plaint and prepare map of the subject land and the same may be submitted in the Court.

4. In the present case, admittedly, the application for appointment for Court Commissioner is filed even before consideration of temporary injunction application and framing of issues. Recording of evidence in the suit is yet to commence. In that view of the matter, impugned order passed by the trial Court, thereby appointing Court Commissioner is contrary to the settled legal position and is liable to be termed as premature.

5. In *Mahadeo Kondiba Shinde Vs. Nitin Sakharam Shinde, (2022) 2 ALL MR 593 (BOM)*, learned Single Judge of this Court has held that appointment of Court Commissioner prior to the commencement of evidence of suit is premature and hence, set aside the said appointment. Similar view is taken by the learned Single Judge of this Court in *Shantaram Dattatray Kekan and Others Vs. Bhausaheb Karbhari Kekan and Another, (2023) 1 AIR Bom R 554*.

6. In the result, writ petition is allowed. Impugned order dated 13/07/2022, passed by learned Joint Civil Judge, Junior Division, Shrigonda, below Exhibit-5 in Regular Civil Suit No.188/2019, is hereby quashed and set aside.

7. Respondents/plaintiffs are at liberty to move application for appointment of Court Commissioner after the parties lead their evidence. At that stage, if such application is filed, it shall be considered by the trial Court on it's own merits, without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)