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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8856 OF 2022

Gayabai Ashok Dhekle

PETITIONER

VERSUS

Vitthal Chimaji Nanvare and Others

RESPONDENTS

.....
Mr. S. P. Katneshwarkar, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st APRIL, 2023

ORDER :

1. Trial Court has appointed Court Commissioner at a premature stage. The petitioner is aggrieved by the said order.
2. The respondent – original plaintiffs have filed the suit for removal of encroachment and possession of the encroached portion.
3. Heard learned advocate for the petitioner. Perused the petition Memo, annexures and the impugned order. Respondents No.1 to 11, though served, have not caused their appearance.
4. Application Exhibit-16 is filed by the plaintiffs for appointment of Taluka Inspector of Land Records as a Court

Commissioner, to measure the suit property, even before framing of the issues.

5. This Court has taken a consistent view that appointment of the Court Commissioner is not desirable before commencement of recording of the evidence. The impugned order, since is contrary to the said legal position, cannot be sustained and deserves to be quashed and set aside.

6. In the result, writ petition is allowed. Impugned order dated 22nd July, 2022 passed by learned Civil Judge, Junior Division, Ghansawangi, below Exhibit-16 in Regular Civil Suit No. 9 of 2022 is hereby quashed and set aside. It is made clear that the parties are at liberty to move application for appointment of Court Commissioner, after recording of evidence commences in the Trial Court. If such application is filed, the same may be decided on its own merits, without being influenced by the impugned order.

[NITIN B. SURYAWANSHI]
JUDGE