

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

WRIT PETITION NO.13152 OF 2017

**DNYANDEO APPASAHEB MOKASE AND ANOTHER
VERSUS
KANTA SUDAM MARDILE AND OTHERS**

...
Advocate for Petitioners : Mr. Prashant D. Suryawanshi
Advocate for Respondent Nos. 1 to 5 : Mr. S.E. Shekade
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 24th APRIL, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 09/06/2017, passed by learned Joint Civil Judge, Junior Division, Ashti, below Exhibit-16 in Regular Civil Suit No.514/2016, thereby rejecting application filed by petitioners/plaintiffs for appointment of Court Commissioner for fixation of boundaries of the suit property.

2. The suit is filed for mandatory and permanent injunction by the plaintiffs against defendants/respondents. After written statement is filed by the defendants, application Exhibit-16 is filed seeking appointment of Court Commissioner for fixation of boundaries of the suit property, along with its map of fixation of boundaries, with the report of Court Commissioner. According to plaintiffs, defendants are trying to destroy boundaries of the suit property and therefore, appointment of Court Commissioner is

necessary.

3. Application is resisted by the defendants. Trial Court has rejected the application holding that by the said application, plaintiffs are trying to collect the evidence.

4. Considering the fact that application was filed by the plaintiffs at premature stage, in view of consistent view taken by this Court that application for appointment of Court Commissioner filed at premature stage should not be entertained, no substance is found in the challenge raised to the impugned order in present petition.

5. Writ petition being devoid of merit is dismissed.

6. It is made clear that if the parties prefer application under Order 26 Rule 9 of the Code of Civil Procedure, after commencement of recording of evidence, the same shall be considered on its own merits by the trial Court, without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)