

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

WRIT PETITION NO.12328 OF 2021

**MAHADEV PRABHU SHINDE AND OTHERS
VERSUS
RAMLING SHIVLING PISURE**

...
Advocate for Petitioners : Mr. K. R. Doke

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 31st AUGUST, 2023

PER COURT :

1. Leave to correct the prayer clause.
2. Petitioners/defendants are aggrieved by the order dated 20/11/2019, passed by learned Joint Civil Judge, Junior Division, Kaij, below Exhibit-24 in Regular Civil Suit No.136/2019, thereby rejecting application filed by the petitioners for appointment of Court Commissioner.
3. Respondent/plaintiff has filed the suit for injunction in respect of Tamarind trees, which he claims to be standing on the boundary of his field and the field of petitioners/defendants. In the said suit, petitioners appeared and filed their written statement. After framing of issues, petitioners moved application Exhibit-24 for appointment of Court Commissioner, to ascertain exact location of the trees. The said application is rejected by the trial Court holding

that appointment of Court Commissioner would amount to collection of evidence. Hence, the present petition.

4. Having heard learned advocate for petitioners and on going through the writ petition memo, annexures thereto and the impugned order, this Court is of the opinion that, at this stage, it is not necessary to interfere in the impugned order in exercise of extraordinary writ jurisdiction.

5. Admittedly, the parties are yet to lead their evidence. This Court has consistently taken a view that application for appointment of Court Commissioner can be considered after recording of evidence of the parties is concluded.

6. In that view of the matter, no fault can be found with the order impugned in present petition. Writ petition being devoid of merits is dismissed with liberty to the petitioners/parties to move application for appointment of Court Commissioner after conclusion of recording of evidence, if so advised. If such application is filed, the same shall be considered by the Trial Court on it's own merits without being influenced by the order impugned in the present petition.

(NITIN B. SURYAWANSHI, J.)