

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

WRIT PETITION NO.12036 OF 2023

**SANTOSH VAIJINATH BADE AND ANOTHER
VERSUS
ASHOK MAHADEO KHADE AND OTHERS**

...
Advocate for Petitioners : Mr. Uttam L. Telgaonkar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th SEPTEMBER, 2023

PER COURT :

1. Petitioners are aggrieved by order dated 21/08/2023, passed by learned 4th Joint Civil Judge, Junior Division, Ambajogai, below Exhibit-49 in Regular Civil Suit No.303/2021, thereby rejecting application filed by petitioners for appointment of Court Commissioner.

2. Upon hearing learned advocate for petitioners and on going through memo of writ petition, annexures thereto and the impugned order, this Court is of opinion that trial Court is justified in rejecting application filed by petitioners at this stage.

3. Admittedly, evidence of the parties is yet to be recorded and the application is moved at preliminary stage. This Court has consistently taken a view that application for appointment of Court Commissioner shall not be entertained at preliminary stage and

such application can be considered after recording of evidence of the parties is concluded.

4. In that view of the matter, no fault can be found with the order impugned in present petition. Writ petition being devoid of merit is dismissed with liberty to petitioners/parties to move application under Order 26 Rule 9 of the Code of Civil Procedure after conclusion of recording of evidence of parties. If such application is filed, the same shall be considered by Trial Court on it's own merit without being influenced by order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)