

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11315 OF 2016

Hari Venkat Mali

...Petitioner

Versus

Atmaram Rangnath Mali And Others

...Respondents

Mr. R.R. Kale h/f. Mr. S.B. Bhosale, Advocate for the petitioner.
Mr. G.J. Kore, Advocate for respondents No. 1 to 8.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th APRIL, 2023

ORDER :

1. By this petition, petitioner challenges the order passed by learned 3rd Joint Civil Judge, Senior Division, Osmanabad, below Exhibit-31 in Regular Civil Suit No. 361 of 2014, thereby allowing the application filed by defendant No. 4 for appointment of Court Commissioner for measurement of the suit land.

2. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

3. Indisputably, the appointment of Court Commissioner

is made by the Trial Court even before framing of issues and before commencement of recording of evidence. A consistent view is taken by this Court that appointment of Court Commissioner should not be made before commencement of recording of evidence. In that view of the matter, writ petition is allowed.

4. Impugned order dated 09.08.2016 passed by learned 3rd Joint Civil Judge, Senior Division, Osmanabad, below Exhibit-31 in Regular Civil Suit No. 361 of 2014 is quashed and set aside.

5. Parties are at liberty to move application for appointment of Court Commissioner after commencement of recording of evidence. If such application is filed, it shall be decided on its own merits without being influenced by the order impugned in the present petition.

6. Considering the fact the suit is of the year 2014, the trial is expedited.

[NITIN B. SURYAWANSHI, J.]