

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

**WRIT PETITION NO.11970 OF 2023**

**SAMBHU BALA KADAM  
VERSUS  
BHAGUBAI @ BHAGIRATHIBAI W/O KARBHARI KADAM (DIED)  
THROUGH HER LEGAL HEIRS AND OTHERS**

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Advocate for Petitioner : Mr. K.N. Shermale

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 26<sup>th</sup> SEPTEMBER, 2023**

**PER COURT :**

1. Petitioner is aggrieved by order dated 08/08/2023, passed by learned 2<sup>nd</sup> Joint Civil Judge, Senior division, Sangamner, below Exhibit-16 in Regular Civil Suit No.160/2014, thereby rejecting application filed by petitioner for appointment of Court Commissioner for measurement of suit property.
2. Upon hearing learned advocate for petitioner 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 petitioner at this stage.
3. Admittedly, evidence of defendants 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 merits is dismissed with liberty to petitioner/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 merits without being influenced by order impugned in present petition.

**(NITIN B. SURYAWANSHI, J.)**