

WRIT PETITION NO.5819 OF 2022

Versus

Mr. S.P. Salgar, Advocate for the petitioners.
Mr. S.S. Bora, Advocate for the respondent.

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DATE : 5th JUNE, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Jamkhed, below Exhibit-22 in Regular Civil Suit No. 235 of 2019.

2. The petitioners filed suit for declaration, permanent injunction seeking removal of encroachment and demarcation of boundaries. Respondent resisted the suit by filing written statement. After 14 days of filing of the suit, application Exhibit-22 is filed by the petitioners for appointment of Court Commissioner. Said application is rejected. Hence, the present petition.

3. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the memo of writ petition, annexures thereto and the impugned order.

4. This Court has consistently taken a view that application for appointment of Court Commissioner filed before commencement of oral evidence is premature. Admittedly, in the present case, application for appointment of Court Commissioner is filed immediately after filing of the suit. In that view of the matter, this Court is not inclined to interfere in the order impugned in the present petition.

5. If, application for appointment of Court Commissioner is filed by either of the party after commencement of recording of oral evidence, such application shall be considered by the Trial Court on its own merits without being influenced by the order impugned in the present petition. With these observations, writ petition is disposed of.

[NITIN B. SURYAWANSHI, J.]