



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

934 WRIT PETITION NO. 3550 OF 2024

Dnyanoba Balaji Bodake And Another

VERSUS

Kadaji Piraji Bodake And Others

...

Advocate for the Petitioner : Mr. Tungar Nikhilesh K.

...

CORAM : R. M. JOSHI, J.

Dated : July 23, 2024

PER COURT :-

1. None for the respondents. Counsel for the petitioners submits that the impugned order is passed appointing Court Commissioner to measure the suit property to Taluka Inspector of Land Records. It is the contention of the Counsel for the petitioners that the evidence of the parties is yet to commence. It is not permissible for party to collect evidence through the Court. It is his contention that having regard to the stay at which the application for appointment of Court Commissioner is allowed, is not proper.

2. Absence of the respondents indicate that the respondents/ plaintiffs are not interested in opposing the petition. It is settled law that the evidence cannot be collected through the Court for and on behalf of the party. It is the primary responsibility of the plaintiff to substantiate his case by leading evidence, and if necessary for the purpose of clarification, appointment of Court Commissioner can be sought. Since the appointment of Court Commissioner is asked for at the initial stage of the

suit, the order passed by the Trial Court permitting such application is not sustainable.

3. Hence, the impugned order dated 07/02/2024, passed below Exhibit 29 in Regular Civil Suit No.572/2022 stands set aside.

4. It is however clarified that it would be open for the plaintiff to file application for appointment of Court Commissioner at appropriate stage of the suit.

5. The Trial Court to decide such application on merit and not for the reason of liberty granted by this Court.

6. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

vj gawade/-.