



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

919 WRIT PETITION NO. 4907 OF 2024

BABASAHEB CHABURAO JADHAV

VERSUS

SAHRAD RAMCHANDRA JADHAV

...

Advocate for the Petitioner : Adv.S.R.Andhale

Advocate for Respondent : Adv.Shubham Jaybhar h/f.

Adv.D.R.Jaybhar

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 09.05.2024

P.C. :

1] Heard the learned counsel for the petitioner.

2] The application filed by the defendant is dismissed for appointment of Court Commissioner and the suit is at the preliminary stage and the interim application is yet to be decided and the trial Court by order dated 21.03.2024 at para no.18 has observed as under :

18) The Plaintiff has right of way over the disputed road or not or where exactly the disputed road is located are the matters regarding which the parties to the lis can led the evidence. No purpose will serve by appointing Court Commissioner. Further, if appointed, it will amount to collecting the evidence which is forbidden by the law.

Hence, on that count also the application is liable to be rejected.

3] The trial Court is also granted liberty to either party to the lis to move similar application when the case ripe up for the evidence, if they desires to do so.

4] It is settled position of law that the Court can allow application for appointment of Court Commissioner at any stage of the suit. However, the same should not be for the purpose of collecting the evidence on behalf of the parties.

5] In the instant case, the application for appointment of Court Commissioner is rejected by the trial court on the ground that the suit is at the preliminary stage and appointment of Court Commissioner at this stage would be nature of collection of evidence on behalf of the plaintiff and thus the trial Court has granted liberty to the parties to apply for appointment of Court Commissioner, if any, at a later stage. Therefore, I do not see any reason to interfere with the impugned order. Hence, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE