



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5471 OF 2024

MANISHA RAJU MAHER
VERSUS
ASHOK LAHU KAMLE

Mr. R. V. Patodi, Advocate for the petitioner

CORAM : R. M. JOSHI, J.
DATE : 11th JUNE, 2024

PER COURT :-

1. Heard.
2. The petitioner is defendant in RCS No. 225 of 2022. He has filed application under Order XXVI Rule 9 of the Code of Civil Procedure (for short 'CPC) vide Exhibit 30 for measurement of the disputed lands. The said application came to be rejected by the Trial Court by passing impugned order dated 28th March, 2024.
3. Learned counsel for the petitioner submits that there is no stage prescribed by Order XXVI of the CPC at which the application for appointment of Court Commissioner continue. To support his submissions he placed reliance on the judgment of High Court of Karnataka in case of *Sri Shadaksharappa Vs. Kumari Vijayalaxmi, LAWS(KAR) 2023-1-1129*.
4. There cannot be any dispute with regard to the submissions

made by the learned counsel for the petitioner in respect no specific stage being given at which an application for Court Commissioner can be made. In facts of the present case, however, this submission does not help petitioner in any manner. Undisputedly, the suit is filed by the plaintiff for seeking permanent injunction against the defendant. Application- Exhibit 5 is yet to be heard and decided by the Trial Court. The learned counsel for the petitioner has brought to the notice of this Court that the lands in question are already measured, however, according to him the plaintiff does not accept such measurement. It is for the defendant to substantiate his stand at interim stage on available material on record. Merely because the plaintiff does not accept the said measurement that does not become a ground for appointment of Court Commissioner at this stage. In any case, even if the Court Commissioner is appointed at this stage, it may not be open for the learned Trial court to accept the report of the Court Commissioner without proof thereof.

5. Perusal of the impugned order shows that the Trial Court has not rejected the prayer for appointment of Court Commissioner outrightly, however, it is observed that this is not the stage to appoint the Court Commissioner. This Court finds no perversity in the said findings recorded by the learned Trial court while rejecting the application.

6. At this stage the learned counsel for the Petitioner seeks leave to prefer appropriate application for appointment of the Court Commissioner at appropriate stage.

7. Petition stands dismissed with liberty as prayed.

(R. M. JOSHI, J.)

ssp