



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

WRIT PETITION NO. 5082 OF 2023

KUSUM BAPURAO JAMBHALE

VERSUS

DNYANESHWAR SHRIDHAR KAVTIKWAR

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Advocate for the Petitioner : Mr. Vivek Vasantrao Bhavthankar

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CORAM : SHAILESH P. BRAHME, J.

DATE : 18th FEBRUARY 2025

PER COURT :

- . Heard. Mr. Bhavthankar learned Counsel for the petitioner.
2. The notice for final disposal is served on the sole respondent, but none appears on his behalf.
3. Petitioner who is original defendant is challenging order dated 17.03.2023 below Exhibit-6 passed by the Joint Civil Judge, Junior Division, Naigaon (Bz.) Dist. Nanded in R.C.S. No.156/2017, appointing Taluka Inspector of Land Record as Commissioner for measuring the suit land.
4. Learned Counsel for the petitioner submits that suit and the application Exhibit-6 were filed on the same date. The application is allowed by the impugned order not only before commencement of the trial, but even before petitioner files written statement. Hence impugned order is perverse.

5. Respondent has filed RCS No.156/2017 for mandatory perpetual injunction on 22.12.2017. It appears that Exhibit-6 under Order 26 Rule 9 of the Code of Civil Procedure was also filed on the same date. Learned trial Judge should not have entertained the application at that stage of the proceeding. This Court has taken consistent view that pre-trial application, seeking trial of the Commissioner cannot be entertained.

6. A useful reference can be made to **Sarjerao Nathu Bangar and others vs. Namdev Keru Bangar and others** in Writ Petition No.13441 of 2019. The pleadings were also not complete. There is undue haste shown by the trial Court in entertaining the application. Impugned order amounts to virtual passing the decree partly. Error of jurisdiction is apparent on the face of record. Impugned order is liable to be quashed.

7. Writ Petition is allowed in terms of prayer clause A.

SHAILESH P BRAHME
JUDGE

NAJEEB..