

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

WRIT PETITION NO.8843 OF 2015

1. Vitthal s/o Narhari Kulthe,  
Age 81 years, Occu. Agri.,
2. Alka Shivaji Kulthe,  
Age 66 years, Occu. Household
3. Prashant s/o Shivaji Kulthe,  
Age 43 years, Occu. Service
4. Sureshchandra s/o Shankar Kulthe,  
Age 61 years, Occu. Pensioner
5. Vilas s/o Shankar Kulthe,  
Age 52 years, Occu. Agri & Business,
6. Vijaya w/o Sureschandra Kulthe,  
Age 56 years, Occu. Agri.,
7. Laxmikant s/o Surechandra Kulthe,  
Age 33 years, Occu. Service
8. Keshav s/o Surechandra Kulthe,  
Age 29 years, Occu. Service

Petitioners No.1, 2, 3 & 5  
R/o Mawlewadi, Wadegavhan,  
Taluka Parner, Dist. Ahmednagar

Petitioners No.4, 6, 7 & 8  
R/o Shivneri Housing Society,  
Harsool Road, Patilnagar, Chikhali,  
Haveli, Pune

.. Petitioners

Versus

1. Hemant s/o Rangnath Kulthe,  
Age 48 years, Occu. Service & Agri.,
2. Chitra w/o Hemant Kulthe,  
Age 41 years, Occu. Agri. & Household,  
Both R/o Malhar Chowk, Station road,  
Ahmednagar, Taluka and District  
Ahmednagar

..Respondents

Mr T.M. Venjane, Advocate for petitioners  
Mr V.P. Latange, Advocate for respondents No.1 and 2

**CORAM : N.W. SAMBRE, J.****DATE : 11th December 2015****PER COURT**

Heard.

2. The respondents/plaintiffs moved an application Exh.10 in Regular Civil Suit No.392 of 2014 praying for fixation of boundaries, if required by appointing Court Commissioner and by carrying out measurement, to effect appropriate entries in the revenue record.

3. In written statement, the area of partition, as was alleged in the plaint appears to have not disputed by the petitioners. The learned Joint Civil Judge, Junior Division, Parner allowed the said application, at the behest of respondents/plaintiffs vide order dated 13<sup>th</sup> August 2015, as such present petition.

4. Mr Venjane, learned Counsel for the petitioners – defendants made two fold submissions, (a) that the trial in the suit is yet to be commenced and as such powers under Order XVI, Rule 9 ought not to have been exercised by the Court below, and (b) by granting the prayer for appointment of Court Commissioner, learned trial Court has almost granted final relief that is claimed in the suit.

5. The above referred submissions are opposed by the learned Counsel for respondents-plaintiffs on the ground the claim in the suit is based on the partition for which all the parties are claiming to have common ancestor namely Narhari. In view of said admission, the application for appointment of Court Commissioner came to be moved and is rightly granted.

6. Having bestowed my anxious thoughts over the submissions, it is noticed that Mr Venjane was rightly submitting that the final relief claimed in the plaint is in relation to appointment of Court Commissioner for fixation of boundaries, the object of appointment of Court Commissioner as is apparent from the order impugned though not spelt out in specific terms could be ascertained from the pleadings of the parties, as the claim of partition alleged in the plaint is not disputed by the defendants. In view thereof, it is always open for the Court to ascertain the facts by appointing Court Commissioner, particularly in the light of what has been claimed in application for appointment of Court Commissioner.

7. In view thereof, in my opinion, no illegality could be noticed, as the petitioners will be at liberty to cross-examine the Court Commissioner in case his evidence is taken into account.

8. As such, Writ Petition stands dismissed. It is needless to say that the Court Commissioner will follow prescribed procedure at the time of measurement. The charges of measurement by the Court Commissioner shall be borne by the plaintiffs-respondents.

**( N.W. SAMBRE, J.)**

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