

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

**WRIT PETITION NO. 6495 OF 2016**

1. Vitthal S/o. Kisan Landge,  
Age 48 years, Occ. Agril.,
2. Dileep S/o. Kisan Landge,  
Age 46 years, Occ. Agril.,
3. Sau. Shantabai W/o Nandkishor Borde,  
Age 50 years, Occ. Agril.,
4. Smt. Subhadrabai @ Babai Kisan Landge,  
Age 71 years, Occ. Agril.,

All R/o. Chari No.15, Landge Wasti,  
Rahata, Tq. Rahata,  
Dist. Ahmednagar.

... Petitioners

**Vs.**

Ashok S/o Kondiram Gagare,  
Age 56 years, Occu. Agril.,  
R/o. Bhagawatipur, Tq. Rahata,  
Dist. Ahmednagar.

...Respondent

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Mr. Sushant V. Dixit, Advocate for the petitioners.

Mr. Ajinkya P. Deshmukh for Mr. A.V. Hon, Advocate for the respondent.

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**CORAM : SUNIL P. DESHMUKH, J.**  
**DATE : 27-06-2016.**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally  
with consent of the parties.

2. This is defendants writ petition aggrieved by the order of rejection of application lodged by them for appointment of court commissioner.

3. Learned counsel for the petitioner contends that, although, ostensibly the sale deed had been executed in favour of respondent, the same is vacuous and is meant for facilitating certain purpose. The transaction is not real and no actual possession has been delivered. The petitioners are still in possession of the suit property. It was as such requested under exhibit-24 to appoint commissioner since no possession has been parted with, based on the transaction contended by the respondent to see this position, it would be necessary to appoint the commissioner.

4. Regular Civil Suit no. 289 of 2015 has been instituted by present respondents seeking injunction against the petitioners. The suit property is claimed to have been purchased by respondent under registered sale deed from present petitioners and further it is being alleged that there is disturbance to the claimed possession of respondents over the suit property and as such the suit. In the suit the present petitioners have appeared and have filed their written statement and say to the application for temporary injunction, the matter is resting at the stage of hearing on interim relief

application.

5. The trial court after hearing the parties has rejected the request for appointment of commissioner, referring to various judgments cited on behalf of the respondents holding that a court commissioner cannot be appointed for collection of evidence or for that matter to find out possession of parties.

6. Learned counsel for the plaintiff-respondent has opposed the request contending that this would tantamount to collection of evidence and further that the property has been sold and the title has been passed to the respondent and the sale deed contains recitals of delivery of possession.

7. Learned counsel for the petitioners refers to a couple of judgments contending that the same would aid the cause under exhibit-24. As far as the case taken from **Vassant Crishna Porobo V/s. Chief Secretary, Govt. of Goa** reported In MANU/MH/0707/2012 is concerned that appears to be on a different factual background and has little relevance to the context of the present petition. In the other case of **Mohd. Hashim Ajmullah Khan V/s. Vasiullah Nasibullah Khan and others** reported in 2014 MLJ 451, the court had been considering the matter and order passed by the trial court. With reference to certain documents,

only with respect to ownership and without reference to the aspect of possession. In the circumstances, the court had considered appointment of the commissioner for looking into the aspect of possession would be relevant.

8. In the present case, however, it is the suit by plaintiff seeking injunction and primarily it is for him to establish his case. In the circumstances, having regard to the stage at which the application has been moved and order has been passed does not warrant any interference. However, as the suit will proceed, at an appropriate stage it is open for the defendants if they consider and if the circumstances so require and are so considered, they may make an attempt afresh. The writ petition is not being entertained and is dismissed. Rule discharged.

**(SUNIL P. DESHMUKH)**  
**JUDGE**