

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

912 WRIT PETITION NO.12448 OF 2018

MARABAI SADASHIV MARATHE AND OTHERS ..PETITIONERS

VERSUS

TUKARAM RAJARAM PATIL AND ANOTHER ..RESPONDENTS

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Mr. Vijay B. Patil, Advocate for the Petitioners.

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CORAM : S. V. GANGAPURWALA, J.

DATED : 03rd JANUARY, 2019.

PER COURT:-

1. The application filed by the defendant for appointment of Court Commissioner is rejected. Aggrieved thereby, the present writ petition.

2. Mr. Patil, learned counsel for petitioners submits that the Plaintiff has filed Suit for declaration and injunction, however, has not given alongwith the plaint the description of the property as is required. The way exist. To bring on record the said aspect, application was filed for appointment of Court Commissioner. The Court Commissioner would measure the property and submit his report. The same would assist the Court in arriving at the just conclusion. The learned counsel submits that the Court has taken a very technical approach while rejecting the application. The person using the way is a matter of evidence,

but the existence of way will have to be demonstrated and the same would be demonstrated effectively by the report of the Court Commissioner after carrying out the measurement.

3. The Suit is for declaration and injunction. It is for the plaintiff to prove his case, as pleaded by him. The petitioner is a defendant in the case. The Trial Court while rejecting the application has observed that the Suit is not for removal of encroachment nor about any boundary dispute and has as such rejected the application. The Court has not committed any error while rejecting the application.

4. In light of the above, writ petition stands disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE