

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

925 WRIT PETITION NO.1117 OF 2021

ASHOK KONDIRAM PATARE AND OTHERS
VERSUS
NAMDEO TUKARAM SHINDE DIED THR HIS LEGAL HEIRS
JANABAI NAMDEO SHINDE AND OTHERS

...
Advocate for Petitioners : Mr. D. R. Markad h/f Mr. S. D.
Kotkar.

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CORAM : V. K. JADHAV, J.
DATE : 20.01.2021

PER COURT :-

1. Heard the learned counsel for the petitioners at length.
2. The petitioners are the original defendants in Regular Civil Suit No.28 of 2012. The respondents / original plaintiffs have instituted the suit for declaration of ownership, a decree of perpetual injunction and for mandatory injunction. It is the pleadings of the respondents / plaintiffs that there is an approach way to their land from the common boundary of the land of defendant Nos.1 and 2 and defendant Nos.3 to 7 and the defendants have obstructed the said approach way from their common *bandh*. According to the petitioners /

defendants, there are three separate approach ways available to the respondents / plaintiffs to approach their suit land. Thus, on the basis of the application filed by the respondents / plaintiffs at Exh.24, the Advocate Court Commissioner was appointed with the following directions :

- “1. ...
- 2 ...
- 3 ...
4. Court Commissioner shall inspect the suit properties and availability of approach ways to the land of plaintiffs.
5. He shall draw a detailed map of the suit properties and approach ways available to the land of plaintiffs.
6. If the Court Commissioner feels desirable he shall take photographs of the suit properties and approach ways at the expenses of party desiring so.
7. Court Commissioner shall submit detailed report along with map and photographs if any.”

3. The Advocate Court Commissioner has accordingly carried out the commission and even during the course of the trial of the suit, the Advocate Court Commissioner Mr. Palve was examined on behalf of the respondents / plaintiffs. The said Advocate Court Commissioner was subjected to cross-

examine at length by the petitioners. He was repeatedly asked about the existence of the alternate three ways. However, the Advocate Court Commissioner has denied the same with the explanation that the said roads are not connected to the suit property and therefore he has not mentioned the said roads in the report. Consequently, in order to fill up the lacuna, the petitioners / original defendants have filed another application Exh.81 for appointment of the Court Commissioner.

4. It is to be noted here that the petitioners / original defendants have not filed any counter claim as such. It is for the respondents / plaintiffs to substantiate their pleadings by leading the oral and documentary evidence. Apart from this, as per the observations of the Court in the impugned order, the matter is at final stage. It is a suit of the year 2012. The learned Judge of the Trial Court has specifically observed that in the light of the points raised by the petitioners / defendants, the Court Commissioner cannot be appointed for collection of evidence. I find no error of law in the impugned order passed by the Trial Court. Hence, the following order :

ORDER

The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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vmk/-