

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

55 WRIT PETITION NO.13993 OF 2017

GORIBI JALILMIYAN SHAIKH AND ANOTHER
VERSUS
GHUDUMABI ISMAIL SHAIKH AND OTHERS

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Advocate for Petitioners : Mr. Tungar Hrishikesh V
Advocate for Respondents 1-3 : Mr. Deshpande Gaurav L
Mr K K Naik Advlcate for respondent nos. 1A to 1J.

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CORAM : V.K. JADHAV, J.
Dated: February 08, 2021

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PER COURT :-

1. Learned counsel appearing for petitioners/original defendant nos. 3 and 4 submits that the respondent/original plaintiff had instituted the suit bearing RCS No.317 of 2016 for recovery of the possession of the land by removing the encroachment. In the pending suit, respondent no.1/original plaintiff has filed an application for appointment of the Court Commissioner and by impugned order dated 31.10.2017 passed below Exh.26 in RCS No.317 of 2016 the trial court has appointed the TILR as Court Commissioner to carry out the measurement of the land.

aaa/-

2. Learned counsel for the petitioners submits that the issues are yet not framed and, therefore, its a early stage to allow the application seeking appointment of the Court commissioner. Furthermore, trial court has also committed an error in directing the TILR to whom he has appointed the court commissioner to measure the land S.No.4/A instead of entire survey no.4. It is not possible to find out the encroachment, if any, unless and until directions are given to measure the entire land survey no.4/A.

3. Learned counsel appearing for the L.Rs. of respondents/original plaintiff has not disputed this legal position that at the very early stage the application has been submitted for appointment of the Court Commissioner.

4. Learned counsel submits that the respondents/legal heirs of the plaintiff would file an appropriate application after recording of the evidence of the plaintiff before the trial court for appointment of the Court Commissioner, if so desired.

aaa/-

5. I have also heard the learned counsel appearing for respondent nos. 2 and 3/original defendant nos.1 and 2.

6. It appears that the trial court has passed the order impugned even before the Settlement of the issues. In view of the same, the order impugned is hereby quashed and set aside, however, the respondents/plaintiff nos.1A to 1J are permitted to file an application for appointment of the Court Commissioner, after evidence of the plaintiff is recorded, and, upon filing such an application, without getting prejudiced by the order passed by this Court setting aside the order of appointment of the Court Commissioner as per the order below Exh.26, the trial court to decide the said application on its own merits. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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