

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2047 OF 2022
WITH
INTERIM APPLICATION NO.1098 OF 2022**

Vijaykumar Baburao Patil and Ors. ..Petitioners

Versus

Babasaheb Ramchandra karale

Since deceased through legal heirs

Ashutosh @ Ganesh Babasaheb Karale and Ors. ..Respondents

Mr. Samir Kumbhakoni, for the Petitioners.

Mr. Surel S. Shah, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. Heard.

2. The prayer of the respondent/plaintiff for appointment of Court Commissioner vide Exh.5 in RCS No.206 of 2018 is allowed vide impugned order dated 29th November, 2019.

3. The fact remains that such powers are exercised by the Court below at the very beginning of the suit even when the issues are not framed. The nature of relief claimed by the respondent/plaintiff is appointment of Court Commissioner and demarcation of the property. This very relief is granted by the Trial Court vide

impugned order that too at the very beginning of the suit claim.

4. The fact remains that the petitioner/defendant denied title of the respondent/plaintiff and that being so, such relief ought not to have been granted by the Trial Court, which virtually amount to granting final relief.

5. That being so, petition is allowed.

5. The impugned order passed below Exh.5 is hereby quashed and set aside.

6. However, this will not preclude the respondent/plaintiff from moving afresh once he entered into the witness box.

[NITIN W. SAMBRE, J.]