

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

WRIT PETITION NO.8383 OF 2021

Shri. Sunil Kantilal Bafana and Ors. ..Petitioners

Versus

Shri. Kamlesh Tukaram Tambekar and Anr. ..Respondents

Mr. Tejpal S. Ingale, for the Petitioners.

Mr. Kuldeep U. Nikam, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th APRIL, 2022

PC.

1. Heard Mr. Tejpal Ingale, learned counsel for the petitioners.

2. According to him, defendants/respondents have obstructed his right to use suit way resulting into filing of the suit. According to him, so as to find out the actual situation on the field, appointment of Court Commissioner is sought, which the Court below for unreasonable reasons rejected.

3. I have appreciated submissions in the light of opposition of Mr. Kuldeep Nikam.

4. The fact remains that in earlier two rounds of litigation the petitioners were unable to establish their similar claim.

5. It appears that the only contention which canvassed is, the title vested in the respondents/defendants is recent in point of time which has given cause of action to the petitioners. I hardly see any convincing reason which warrants interference in the order impugned as the Court is justified in recording finding that the application is taken out to collect evidence. Apart from above, the fact remains that the trial in the suit is yet to commence.

6. As such the petition fails, dismissed.

[NITIN W. SAMBRE, J.]