

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 629 OF 2021

(Raghoji s/o Kundlik Jatale and others ..vs.. Gopal s/o Keshao Jatale)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.K. Paliwal, Counsel for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 10-02-2022

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The petitioners are the defendants in Regular Civil Suit 41/2018 which is instituted by the respondent seeking permanent injunction restraining the defendants from creating new way and from disturbing the peaceful possession of the plaintiff qua the suit property which is an agricultural field.

3. The defendants filed written statement and lodged counter-claim, in turn seeking permanent injunction against the plaintiff from obstructing the defendants from approaching their agricultural field from the approach road.

4. The defendants preferred an application Exhibit 14 seeking appointment of Court commissioner in which

the assertion is that since the approach road is not shown in the official record, unless commissioner is appointed, it would not be possible for the defendants to prove their claim.

5. The learned trial Judge rejected the application *inter alia* observing that Court commissioner cannot be appointed for collecting evidence through the machinery of the Court. Certain other observations are made touching the absence of diligence and *bona fides*, on which no observation is necessary.

6. Considering that both the suit claim and the counter-claim seek injunction simplicitor, I do not find any error in the view taken by the learned trial judge. It is also difficult to disagree with the observation of the learned trial Judge that commissioner cannot be appointed to collect evidence.

7. If after the evidence is adduced by both the parties, the learned trial Judge is of the view that for elucidation or clarification, Court commissioner is required to be appointed, it is always open and permissible for the learned trial Judge to *suo moto* invoke the provisions of Order XXVI Rule 9 of the Civil Procedure Code.

8. I see no error warranting interference in writ jurisdiction.

9. The petition is dismissed.

JUDGE

adgokar