

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

WRIT PETITION NO. 5669 OF 2022

Swati Satish Kale and another .. Petitioners

Versus

Balasaheb Badrinath Gaikwad
and others .. Respondents

Shri B. N. Patil, Advocate for the Petitioners.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH JANUARY, 2023.**

FINAL ORDER :

. Heard.

2. By order of 26th February, 2022, the petitioners' application for appointment of Court Commissioner came to be rejected on the ground that in the plaint it is not the case of the petitioners that the suit property is encroached or there is any boundary dispute.

3. Learned counsel for the petitioners submits that the defendants in the suit had not objected to the appointment of Court Commissioner and the Trial Court ought not to have rejected the application.

4. I have perused the copy of the plaint. R. C. S. No. 323 of 2019 has been preferred by the petitioners seeking an order of

perpetual injunction as against the defendants on the ground that the defendants are interfering in the enjoyment of the petitioners' property by uprooting the poles and throwing garbage and waste in the petitioners' property. Learned counsel for the petitioners has not been able to demonstrate that the suit as filed was in respect of encroachment by the defendants. Learned counsel for the petitioners submits that subsequently during the pendency of proceedings, defendants have encroached upon the suit property. In my view, in such event a necessary foundation has to be made in the plaint and only thereafter an application can be filed for appointment of Court Commissioner.

5. In the impugned order, in absence of any case of encroachment or boundary dispute, the Trial Court has rightly held that for collecting the evidence Court Commissioner cannot be appointed. There is no infirmity in the impugned order. The writ petition is devoid of merits. Same is accordingly dismissed.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23