

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

WRIT PETITION NO.1264 OF 2015

**KAKASAHEB RAMBHAU NIKAM SINCE DIED THROUGH LRS
BHAGIRATHI W/O KAKA NIKAM AND OTHERS
VERSUS
RAMBHAU VITTHALRAO ZADBUKE AND OTHERS**

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Advocate for Petitioners: Mr. Kishor R. Doke
Advocate for Respondent Nos.1 to 7: Mr. Ravibhushan P. Adgaonkar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17TH APRIL, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 14/08/2014, passed by learned Civil Judge, Junior Division, Washi, below Exhibit-40 in Regular Civil Suit No.371/2013, thereby rejecting application filed by the petitioners/defendants for appointment of Court Commissioner.
2. Respondents/original plaintiffs have filed suit for injunction. The dispute is about marginal space between the suit plots. Petitioners/defendants appeared and resisted the suit by filing written statement. Thereafter defendants have filed application Exhibit-40 for appointment of Court Commissioner, which is rejected by the impugned order.
3. Heard learned advocate for petitioners and learned

advocate for respondent Nos. 1 to 7. Perused the grounds raised in the petition, annexures thereto and the impugned order.

4. It is informed at bar that evidence of plaintiffs is almost over and plaintiffs are likely to file evidence closure pursis. Admittedly, there is dispute about marginal space abutting to the suit plots. Defendants have specifically averred in their written statement that plaintiffs have obtained N.A. permission in respect of land Survey No.18/1, admeasuring 2 H 36 R. Defendants are in possession of the disputed portion of land and plaintiffs have no right over the said disputed portion. Plot Nos. 76 to 79 of the defendants are situated on southern side of the real boundary of Washi to Washi Fata road. Considering the averments made in the plaint, written statement and in the application Exhibit-40, appointment of Court Commissioner would enable the trial Court to effectively resolve dispute between the parties.

5. In that view of the matter, the impugned order cannot be sustained and the same is hereby quashed and set aside. Application Exhibit-40 is allowed. Court Commissioner in pursuance to the prayer made in application Exhibit-40 be appointed after evidence of the defendants is over.

(NITIN B. SURYAWANSHI, J.)