

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

WRIT PETITION NO.11151 OF 2023

**SUKHDEV DAGADU KAYANDE AND OTHERS
VERSUS
BHAGWAN BAJIRAO KAYANDE AND ANOTHER**

...
Advocate for Petitioners : Mr. Rajendra K. Jadhavar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th SEPTEMBER, 2023

PER COURT :

1. After arguing the matter on merits, learned advocate for petitioners, realised the fact that there are no pleadings in the plaint in respect of construction being carried out by the defendants/respondents, which obstructs the pathway of plaintiffs/petitioners and there is no prayer in that behalf. The trial Court has rejected the application filed by the petitioners for appointment of Court Commissioner holding that, there is no contention about encroachment in the suit.

2. Faced with this situation, learned advocate for petitioners seeks permission to withdraw the writ petition with liberty to take appropriate steps. Permission granted. Writ petition is dismissed as withdrawn, with liberty to the petitioners to take appropriate steps in the suit.

3. It is made clear that, if the petitioners file application for appointment of Court Commissioner after amending the suit, the same shall be considered on it's own merits by the trial Court, without being influenced by the order impugned in the present petition.

(NITIN B. SURYAWANSHI, J.)