

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

**CIVIL WRIT PETITION NO. 14673 OF 2022**

Shripati Keshav Kamble & Anr.

..Petitioners

Versus

Shivaji Yadu Kamble & Ors.

..Respondents

Mr. Swaroop M. Karade for Petitioners.

Mr. Rishikesh Mohite for Respondents.

**CORAM : SARANG V. KOTWAL, J.**

**DATE : 20 MARCH 2023**

**PC :**

1. This Petition challenges two orders. The first is dated 09/03/2021 passed by 2<sup>nd</sup> Jt. C.J.J.D., Peth Vadgaon below Exhibit 28 passed in R.C.S.No.48 of 2020. Vide that order, a Court Commissioner was appointed for submitting a report in respect of an encroachment on a public road and gutter. The same order was sought to be reviewed by filing application Exhibit 31. That application was also rejected by the same Judge on 06/07/2022. Both these orders are under challenge before this Court.

2. Heard Shri. Swaroop Karade, learned counsel for the Petitioners and Shri. Rishikesh Mohite, learned counsel for the

Respondent No.1.

3. The order of appointment of a Court Commissioner is challenged by the original Defendant Nos.3 and 4.

4. Learned counsel for the Petitioners/Defendant Nos.3 and 4 submitted that the order of appointment of a Court Commissioner was not necessary. It was not alleged that the encroachment was on the private property of the plaintiff. The application for appointment of a Court Commissioner was made for collection of evidence which was not necessary.

5. Learned counsel for the Respondent No.1 who is the Plaintiff submitted that, for some reasons the order granting stay was not communicated to the Court Commissioner and the measurement was already completed and the Court Commissioner's report is ready. It was presented before the trial Court on 04/03/2021, however, it was not taken on record in the said proceeding before the Trial Court.

6. I have heard both the parties. I also perused the pleadings in the plaint. The plaint clearly mentions the difficulties

faced by the plaintiff because of the alleged encroachment on the common road and gutter. The Court Commissioner would be a proper independent person to present the correct facts before the Court through his report. The Defendant Nos.3 and 4 will not be prejudiced because of the report because they have right to challenge that report.

7. Considering this situation, I do not see any reason to interfere with the impugned orders.

8. Consequently, the Petition is dismissed and is disposed of.

**(SARANG V. KOTWAL, J.)**