

SA Pathan

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

WRIT PETITION NO.13465 OF 2023

Dilip Bapu Bansode & Ors

... Petitioners

V/s.

Ramchandra Balu Sutar (Since
Deceased) & Ors

... Respondents

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Mr. Rushikesh C. Barge, for Peittioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 4, 2023

P.C.:

1. The defendants are challenging order passed by the Trial Court rejecting application for appointment of Court Commissioner.
2. The original plaintiffs filed suit seeking declaration of ownership over the suit property described in paragraph 1 of the plaint and the defendants be restrained from disturbing plaintiffs possession over the suit property described in paragraph 1(b) and further restraining them from constructing over the suit property.
3. The Trial Court has framed issues which cast burden on the plaintiffs to prove it.
4. In such suit, defendants have filed an application for appointment of Court Commissioner. It is well settled that appointment of Court Commissioner cannot be done for the

purpose of collection of evidence. Such application can be filed in a suit is restricted to removal of encroachment or whether issue in relation to boundary is involved.

5. Considering the nature of the suit and the burden is cast on the plaintiffs to prove his case, no error of jurisdiction of the Trial Court by rejecting the application on behalf of defendant.

6. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)