

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

**WRIT PETITION NO.843/2023**

**M/s Bajaj Construction, a partnership firm through its Partner Shri Mahesh s/o**  
**Chetandas Bajaj, through its power of attorney holder Manish Chetandas Bajaj**  
**and another**  
**..Versus...**  
**Mohini w/o Makhan Gupta**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri Alok Daga, Advocate for petitioners  
Shri A.M. Sudame, Advocate for respondent  
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**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 06/02/2023**

1. Heard Shri Alok Daga, learned counsel for the petitioners and Shri A.M. Sudame, learned counsel for the respondent.
2. The petition challenges the order dated 12/01/2023, whereby the application filed by the respondent/ plaintiff for appointment of Commissioner under Order 26 Rule 9 of the Code of Civil Procedure has been allowed. Taking exception to the same, Shri Alok Daga, learned counsel for the petitioners submits that since the suit claimed an easementary right, the same could not have been established by seeking to appoint a Commissioner and the appointment of Commissioner

cannot be for the purpose of collecting the evidence. Reliance is placed upon *Kavita Pramod Firke Vs. Anita Arun Dhake and others, 2021 SCC OnLine Bom. 33*; *Sanjay Kisan Thorat Vs. Ramchandra Parsu Thorat, 2018 SCC OnLine Bom. 626*; *Dyaneshwar Trimbak Sakhare Vs. Gajanan Maharaj Sansthan, Shegaon and others, 2019 SCC OnLine Bom. 806*; *Dhondiram Nivrutti Pawar Vs. Laxman Khashaba Pawar, 2018 SCC OnLine Bom.640* and *Arjun Rambhau Dhankude and another Vs. Bhanudas Ramchandra Murkute and others, 2019 SCC OnLine Bom. 1697*.

3. Shri A.M. Sudame, learned counsel for the respondent supports the impugned order and contends, that the factual position is already on record on account of the plaint map at page 28 and therefore, the question of collecting evidence did not arise at all.

4. The suit filed by the respondent/plaintiff is for declaration of easementary right and permanent injunction claiming to be a tenant of portion of building constructed on plot no.129. The plaint map at page 29 demonstrates the nature of easement sought. The application for appointment of Court Commissioner was for the purpose of substantiating the position in plaint map which was already on record. The same was not opposed by the present petitioners by filing reply, as a result of which, the Commissioner came to be appointed. In case of a dispute, regarding easement or boundaries of a property, it is

always desirable that though a plaint map is on record, the position be independently verified by appointing Court Commissioner, who can be then examined and cross-examined as the Court is required to decide the lis based upon the correct position factually.

5. That being the position, I do not see any substance in the ground raised that the application has been made for collecting evidence, in view of which, the reliances by the learned counsel for the petitioner are of no assistance. The writ petition is, therefore, without any merits and the same is accordingly dismissed. No order as to costs.

**(AVINASH G. GHAROTE, J.)**

Wadkar