

Shabnoor

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

WRIT PETITION NO.11413 OF 2024

Popat Jagannath Jagdale

(Since Deceased)

Through Legal Heirs & Anr.

... Petitioners

V/s.

Sampat Jagannath Jagdale & Ors.

... Respondents

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Mr. Rajaram V. Bansode for Petitioners.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 13, 2024

P.C.:

- 1.** Challenge in this writ petition is to the order passed by the Trial Court rejecting Petitioners' application under Order 26, Rule 9 of the Code of Civil Procedure, 1908 (CPC).
- 2.** On perusal of the plaint, indicates that the suit seeks a declaration that the plaintiff and defendant Nos.1, 6 to 8 are owners by virtue of sale deed dated 3rd August 2004. Moreover, it seeks a declaration that the decree passed on 12th March 2015 in Regular Civil Suit No.135 of 2015 be declared as illegal and injunction restraining defendants from disturbing plaintiffs' possession over the suit property.
- 3.** On perusal the plaint indicates that there is neither dispute in relation to identity of the suit property nor in relation to boundaries. In absence of dispute in relation to

encroachment or boundary dispute, the Trial Court was justified in rejecting petitioners' application for appointment of the Court Commissioner. Hence, no interference in the impugned order is called for.

4. At this stage, the learned Advocate for the petitioners states that the trial is yet to be commenced. Therefore, it is made clear that, if the relief in the plaint is allowed to be amended to incorporate dispute in relation to encroachment or boundary, it shall be open for the petitioner to file an application for appointment of the Court Commissioner afresh.

5. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)