



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR
WRIT PETITION NO. 1016 OF 2024**

1. Ramesh V. Idhole
 2. Sau. Sunita R. Idhole
 3. Sau. Kasturabai D. Gote
 4. Sau. Indubai P. Gote
 5. Sau. Rajamati C. Wakudkar
- ...Petitioners

Versus

1. Pandhari A. Idhole
 2. Bhaskar R. Padghan
 3. Baban G. Padghan
 4. Bhagwan M. Idhole
 5. Sau. Ranjana B. Kavar
 6. Bhagwan S. Kavar
 7. Vasant G. Padghan
 8. Rameshwar N. Khandare
 9. Laxman G. Padghan
 10. Tukaram K. Khandare
 11. Smt. Seema D. Kate
 12. Madhukar R. Padghan
 13. Sanjay J. Khandare
 14. Chandrakant A. Idhole
 15. State of Maharashtra
 16. Sub-Divisional Officer. Washim,
 17. Tahsildhar & Mamlatdar,
Tahsil Office, Washim
 18. Revenue Inspector, Adoli
 19. Talathi, Adoli
- ...Respondents

WITH
CIVIL APPLICATION NO. 1187 of 2024

Mr. P.A. Deshpande for the Petitioners.
Mr. A.R. Deshpande for Respondent Nos.1 to 10 and 12 to 14.
Mr. C.A. Lokhande, AGP for the Respondent/State.

CORAM : N. R. BORKAR, J.
DATE : 18 JUNE 2024.

PC:-

1. This petition takes exception to the order dated 17.1.2024 passed by the 2nd Joint Civil Judge, Senior Division, Washim below Exhibit-79 in R.C.S. No. 138 of 2022.
2. By the order impugned, the trial Court has allowed the application filed by the respondents/defendants for appointment of Court Commissioner.
3. I have heard the learned counsel for the petitioners/plaintiffs and learned counsel for the contesting respondents/defendants.
4. Learned counsel for the petitioners submits that the trial Court erred in entertaining the application for appointment of Court Commissioner at the stage of hearing of application filed by the petitioners for temporary injunction. The learned counsel for the petitioners submits that the application for appointment of Court Commissioner can be moved only after conclusion of evidence of both the parties. In support of submissions, learned counsel for the petitioners has relied upon the order passed by this Court in the case of ***Baburao T. Patil and anr. vs. Natthu Trimbak Choudhary and ors.***¹
5. On the other hand, learned counsel for the contesting respondents submits that the case of the petitioners is that

1 Writ Petition NO. 9973 of 2021 decided on 30.08.2022.

there exist no approach /access road through the suit property as claimed by the respondents/defendants. It is submitted that considering the nature of dispute between the parties, the trial Court was justified in entertaining the application for appointment of Court Commissioner before deciding the application for temporary injunction. It is submitted that the same is permissible and in support of it, the learned counsel has relied upon the judgment of this Court in **Mayuresh S. Sonawane vs. Yashwant B. Bhoir**².

6. The only contention is that the trial Court ought not to have entertained the application for appointment of Court Commissioner at the stage of hearing of application for temporary injunction.

7. Considering the nature of dispute between the parties, if the appointment of Court Commissioner for local investigation was found to be expedient by the trial Court before deciding the application for temporary injunction, then the same cannot be interfered in writ jurisdiction. The Petition is dismissed.

8. Pending Civil Application does not survive and the same is also disposed of.

(N.R. BORKAR, J.)

² 2022 (2) ABR 246