

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6192 OF 2025

Vitthal Genu Raut

VERSUS

Popat Genu Raut And Others

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Advocate for Petitioner : Mr. Sagar Somnath Ghate

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 17, 2025

PER COURT :-

1. The petitioner who is original defendant in Regular Civil Suit No.23 of 2017 moved an application for appointment of Court Commissioner. The learned Trial Judge considering the rival submissions observed that the suit is filed for relief of declaration and perpetual injunction. The plaintiff is claiming easementary right of road whereas, defendants claimed that the plaintiff has alternate road. The Trial Court further observed that the registered sale deed of Gat No.72 nowhere depicts existence of any such road. The Trial Court further observed that the application moved on behalf of defendant is an attempt to collect evidence, which cannot be allowed in exercise of powers conferred under Order XXVI Rule 1 of Civil Procedure Code.

2. Learned advocate appearing for petitioner in his endeavour to assail the order of Trial Court relying upon the

observation of High Court of Karnataka in Writ Petition No.201274 of 2022 submits that if the appointment of Court Commissioner is necessary for resolving the controversy between the parties, even in case such appointment is in nature of collection of evidence, the Court is empowered to grant such application. There cannot be a dispute on preposition of law. However, it is for the party who seeks appoint of Court Commissioner to establish such appointment is necessary for effective adjudication of dispute between the parties and would facilitate the Court to reach just decision. Admittedly, in present case the recording of evidence of parties is not yet started. After recording of oral evidence, if Court finds that to bring clarity as to the disputed issues, the appointment of Court Commissioner is necessary, the Court can exercise jurisdiction under Order XXVI Rule 1 of Civil Procedure Code.

3. Looking to the impugned order, it appears that the Trial Court was of the view that appointment of Court Commissioner would not be necessary at this stage. Accordingly, rejected the prayer of defendants. However, in case after recording of evidence, the defendants makes out a case for appointment of Court Commissioner, such a prayer can be considered by the Trial Court without impeded by the order impugned in this petition.

(3)

4. In that view of matter, writ petition stands rejected with aforesaid liberty in favour of petitioner.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//