



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7185 OF 2025

Sayed Ismail Sayed Abdulla And Another.

VERSUS

Harish Chandra S/o Pundlikrao Shirsat Died His Lrs Taramati
Died Lrs Varuan And Others

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Advocate for Petitioners : Mrs.A N Ansari

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 19, 2025

PER COURT :-

1. Heard Mrs. Ansari, learned advocate appearing for the petitioners.
2. Petitioners impugns the order dated 19.4.2025 passed by the Civil Judge S.D.Jalna in R.C.S. No.17 of 2011.
3. Petitioners are original defendants in the suit. Plaintiffs filed suit seeking relief of declaration of ownership and perpetual injunction in respect of the land bearing gat no.73 to the extent of three acres out of total area of 2 H 59 R. Defendants filed written statement as well as counter-claim on the basis of notarized relinquishment-deed dated 31.11.2001 claiming that after conversion of old survey no.66/1 in gat numbers on implementation of consolidation scheme, some

land owned by Baburao Shirsath was executed due to mistake of officers. According to petitioners, 27 Gunthas portion was wrongly deleted from area within ownership of the original owner and it has been purchased by him through relinquishment-deed.

4. Apparently, it can be observed from pleadings in plaint and written statement as well as counter-claim, it is nobody's case that either of the party encroached upon the area within ownership of the others. The defendants case is that due to mistake in implementing consolidation scheme, some land was left from consideration while finalizing the scheme. Now same is possessed by him on the basis of relinquishment-deed executed by the original owner. In this background, petitioners/defendants filed an application under order XXVI Rule 9 of the Civil Procedure Code seeking appointment of Court Commissioner. The learned Judge of the Trial Court rejected said application specifically observing that this is not a case of encroachment or possession after removal of the encroachment. Plaintiffs as well as defendants are asserting their ownership and possession over respective area

which they will have to establish by leading evidence in the Trial.

5. The pleadings of parties clearly reveal that this is not a case where recovery of encroached portion is sought. If the parties are claiming their possession, it is for them to establish same by leading cogent evidence. In such a case appointment of the Court Commissioner is not advisable as the Court cannot exercise such jurisdiction to help any party to collect the evidence. In that view of the matter, no case is made out to appoint Court Commissioner or exercise powers under Article 227 of the Constitution of India. In the result, writ petition stands **rejected**.

(S. G. CHAPALGAONKAR)
Judge

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