



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

1029 WRIT PETITION NO. 9651 OF 2023

SHIVAJI KUNDLIKRAO CHOTHE AND OTHERS  
VERSUS  
JAGDISH RADHASWAMI ALIAS MADHAVSING THAKUR AND OTHERS

...  
Advocate for the Petitioners : Mr. Rajput Deepak K.  
Advocate for Respondent Nos. 1 to 5 : Mr. S. B Pathan  
Advocate for Respondent Nos. 1 to 8 : Mr. Shejwal Arun S.  
Advocate for Respondent Nos. 6 to 8 : Mr. Muthiyan Namit Sunil  
...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 16.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of present petition, the petitioners are assailing the order dated 27.04.2023 passed below Exhibit 55-D by the Civil Judge, Junior Division, Ambad in RCS No. 234 of 2013, whereby, application filed by original defendant Nos. 1 to 3/respondent Nos. 6 to 8 for appointment of Court Commissioner came to be allowed.
3. Learned Counsel for the respondents submits that pursuant to the order passed by the learned trial Court, the measurement was carried out and the report was submitted.
4. The suit filed by the original plaintiff is for perpetual injunction wherein the parties have not led the evidence yet as the suit is

at the stage of framing of issues. It is settled principle of law that the Court Commissioner cannot be appointed for collection of evidence and in appropriate cases, the Court Commissioner may be appointed if occasion arises, after the leading of evidence.

5. In view of the fact that as the measurement is already carried out and the report is submitted, the same be kept in abeyance.

6. However, Original defendant Nos. 1 to 3 /Respondent Nos. 6 to 8 may after leading their evidence file appropriate application before the concerned Court for calling the said report and the same shall be considered by the trial Court in accordance with the law.

7. In view thereof, the Writ Petition is disposed of.

**(SIDDHESHWAR S. THOMBRE, J.)**

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