

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9908 OF 2025

Digamber Manikrao Jadhav Died Thr Lrs Mangalbai And Others

VERSUS

Dattatraya Manikrao Died Thr Lrs Laxmaibai Died Chabubai And
Others

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Advocate for the Petitioners : Mr. Jadhav S.V.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : AUGUST 13, 2025

PER COURT :-

1. Heard Mr. Jadhav, learned advocate appearing for petitioners.
2. The petitioners impugn order dated 15.07.2025 passed by learned Civil Judge Senior Division, Latur below Exhibit-174 in Special Civil Suit No.25 of 2025, by which prayer of petitioners for appointment of Court Commissioner for measurement of land has been rejected.
3. Mr. Jadhav, learned advocate appearing for petitioners submits that petitioners were ready to pay the charges for appointment of Court Commissioner. Defendants have encroached upon property in possession of plaintiff. As such, the Trial Court ought to have allowed the application and appointed Court Commissioner.
4. Perusal of plaint shows that plaintiff has sought relief of partition and separate possession in respect of suit property. Except

prayer for partition, no other relief is claimed. The pleadings in the plaint nowhere depicts that any dispute as regards to encroachment or boundaries has been raised in the plaint. However, by filing application below Exhibit-174, plaintiff sought appointment of Court Commissioner under Order 26 Rule 10 (b) r/w 151 of Civil Procedure Code. Perusal of impugned order shows that learned Trial Court observed that when suit is filed simplicitor for partition by metes and bounds against defendants and there is no pleading about the dispute over boundaries of land or encroachment, there is no necessity to appoint the Court Commissioner.

5. In light of nature of suit and pleadings in the plaint, the learned Trial Court has rightly applied the principles of law governing the appointment of Court Commissioner. In that view of matter, this Court do not find any reason to interfere in the impugned order.

6. Hence, Writ Petition stands rejected.

(S.G. CHAPALGAONKAR, J.)