

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9852 OF 2023

Ujwala Jitendra Zambre And Another

VERSUS

Sushil Poulad Garjar

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Advocate for the Petitioners : Mr. Gholap Ajit Manohar

Advocate for Respondent : Mr. Patil Mangesh G.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 18, 2025

PER COURT :

1. Heard learned senior counsel for respective parties.
2. By way of present petition, the petitioners assail the order dated 12.07.2023 passed below Exhibit-148 by the learned Civil Judge Junior Division, Yawal in R.C.S. No. 07 of 2013.
3. Learned counsel for the petitioners submits that the application which was filed by respondent/plaintiff is contrary to the own belief, the application which was filed for appointment of Court Commissioner is at the fag end of the trial. Both parties have led the evidence and it has come in the evidence of plaintiff that the defendants have not encroached upon the property of the plaintiff. He further submits that plaintiff's case is based upon earlier two measurement reports and when those measurement reports does not support the case of the petitioner and to fill up the lacuna, the application was filed. He further points out that the entire case of the

plaintiff was destroyed by the defendants and therefore, the learned Trial Court ought not to have allowed the application at the fag end of the trial.

4. Per contra, learned counsel for respondent/plaintiff supports the order passed by the learned Trial Court.

5. Having heard the respective parties, it seems that the plaintiff filed suit for removal of encroachment and there are disputes about the boundaries and plaintiff's case rests upon the measurement map, but as far as on this point, at this stage it is not proper to make any comment about the same. But in view of settled principles of law about appointment of Court Commissioner is concerned, when the suit is for removal of encroachment and if there were disputes about boundaries, then the Trial Court is supposed to appoint Court Commissioner to ascertain the encroachment and to proceed further.

6. As herein the case, admittedly, the suit is for removal and encroachment and therefore, the learned Trial Court considered this aspect and allowed the application.

7. The Hon'ble Apex Court in the matter of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Ors* reported in *AIR 2022 SC 4256*, has laid down certain principles whereby in all manner the appointment of Court Commissioner can be done. Considering the law laid down by the Hon'ble Apex Court in

the case of *Life Insurance Corporation of India (Supra)*, this case also falls under those principles.

8. Therefore, I do not find any reason to interfere with the order passed by the Trial Court under Article 227 of the Constitution of India. The petition is dismissed. No order as to cost.

9. However, learned counsel for the petitioner submits that the suit is of the year 2013 and now the application was filed, the suit was already kept for arguments. Therefore, after receipt of Court Commissioner's report, the Trial Court is directed to decide the suit within a period of six months from today.

(SIDDHESHWAR S. THOMBRE, J.)