



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1449 OF 2018

1. Dhondiram s/o Dada Dhawale,
Age : 62 years, Occu : Business.
2. Baburao s/o Dada Dhawale,
Age: 55 years, Occu: Business,
3. Ramchandra s/o Dada Dhawale,
Since deceased through LRs.
- 3A) Latabai w/o Ramchandra Dhawale,
Age: 44 years, Occu: Household.
- 3B) Ashok s/o Ramchandra Dhawale,
Age: 25 years, Occu: Business.
- 3C) Sandip s/o Ramchandra Dhawale,
Age: 24 years, Occu: Business.
- 3D) Radha w/o Sanjay Jagtap,
Age: 29 years, Occu: Household.

All R/o. Belapur Road,
Vidya Housing Society Parisar,
Ward No.7, Shrirampur, Dist. Ahmednagar.

...PETITIONERS
(Orig. plaintiffs)

-VERSUS-

1. Gopal s/o Natha Gaikwad,
Since Deceased Through L.Rs.
- 1A) Raosaheb s/o Gopal Gaikwad,
Age: 44 Years, Occu: Business.
- 1B) Kesharbai w/o Gopal Gaikwad,
Since Deceased Through L.Rs.

1B1) Sanjay s/o Gopal Gaikwad,
Age: 50 Years, Occu: Service.
All R/o. Lokhande Chal, Labade Vasti,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

2) The Superintendent of Land Records,
Ahmednager, Dist. Ahmednagar.

...RESPONDENTS
(Orig. defendants)

...

Shri V.P. Latange, Advocate for the Petitioners/ Plaintiffs.
Shri D.K. Rajput, Advocate for Respondent Nos.1A and 1B1/
Defendants.
Shri S.N. Kendre, AGP for Respondent No.2/State.

...

CORAM : PRAFULLA S. KHUBALKAR, J.

Reserved on : 19th June, 2025.

Pronounced on : 11th July, 2025

JUDGMENT :-

1. Heard Advocate Shri V.P. Latange, learned counsel for the petitioners, Advocate Shri D.K. Rajput, learned counsel for respondent Nos.1A and 1B1 and Advocate Shri S.N. Kendre, learned AGP for Respondent No.2/ State.

2. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

3. The petitioners are original plaintiffs and the

respondents are original defendants. The parties hereinafter referred to as the plaintiffs and the defendants according to their status in the civil suit.

4. By way of the instant petition, the petitioners/ plaintiffs have challenged the order dated 06.10.2017 passed by the learned Civil Judge, Senior Division, Shrirampur, District Ahmednagar, in Regular Civil Suit No.1/2012 rejecting the plaintiffs' application (exhibit 65) for appointment of the court commissioner. The controversy involved in the petition is in narrow compass.

5. Learned advocate Shri Latange for the plaintiffs submitted that the plaintiffs have filed the suit for possession with respect to the suit property bearing Survey No.51/1, which is contested by the defendants by filing their written statement. In view of the controversy involved, the plaintiffs have filed the application (exhibit 30) dated 09.06.2014 for appointment of the court commission for measurement of the suit property bearing Survey No.51/1. By this application, the plaintiffs have prayed for appointment of the Taluka Inspector of Land Records (TILR) as court commissioner. This application was allowed by order

dated 24.06.2014 and the TILR was appointed as court commissioner to measure the land bearing Survey No.51/1 out of CTS No.2020. It is submitted that although the TILR measured the land, however, the measurement was not by proper procedure and, therefore, the plaintiffs filed the second application (exhibit 40) dated 12.02.2015 for appointment of the District Superintendent of Land Records (DSLRL) as court commissioner. By order dated 20.08.2015, this application (exhibit 40) was allowed and the DSLRL was appointed as court commissioner to measure the land. Accordingly, the DSLRL submitted his report dated 01.10.2015 (Exhibit 50), which also mentioned that there was no 'Nimtana Mojani', which is conducted after confirmation of boundaries. It is submitted that in view of requirement to perform 'Nimtana Mojani' as observed by the DSLRL by his report/letter dated 01.10.2015, the plaintiffs filed third application (exhibit 65) for appointment of the DSLRL, Ahmednagar, as court commissioner. By order dated 06.10.2017, the Trial Court has rejected this application (exhibit 65) observing that the plaintiffs are not entitled to collect evidence through the court commissioner. It is also observed that in view of earlier commissions, the further appointment of the DSLRL as

court commissioner was not warranted.

6. Learned advocate for the plaintiffs submits that this order rejecting the application for appointment of court commissioner for the purpose of 'Nimtana Mojani' is erroneous since the DSLR has himself pointed out that in absence of 'Nimtana Mojani', the factual position could not become clear. He also submitted that the appointment of court commissioner for conducting 'Nimtana Mojani' is necessary for complete adjudication of the controversy involved in the suit and, on these counts, assailed the impugned order.

7. Per contra, learned advocate Shri Rajput, learned counsel for the respondents/ defendants strongly opposed the petition. He vehemently submitted that the plaintiffs have repeatedly sought for appointment of court commissioner only with an attempt to collect favourable evidence and third application for appointment of court commissioner is clearly an abuse of process of law. He submitted that the plaintiffs are not owners of the suit property and the application for appointment of court commissioner is an attempt to bring on record some evidence to substantiate their case. He submitted that the

plaintiffs have themselves encroached upon the land of the Irrigation Department and in absence of any ownership with them, the suit itself is liable to be dismissed. He further submitted that since the plaintiffs have already filed an objection in the nature of appeal before the DSLR, Ahmednagar, challenging the measurement map with respect to the suit property, the further request for appointment of court commissioner vide the application at exhibit 65 has been rightly rejected by the Trial Court.

8. Rival contentions thus fall for my consideration.

9. It is undisputed position that the petitioners, who are the original plaintiffs, have earlier filed application at exhibit 30 for appointment of the TILR as court commissioner and the same was allowed by order dated 24.06.2014. The plaintiffs thereafter, filed second application at exhibit 40 for appointment of the DSLR as court commissioner and the same was also allowed by order dated 20.08.2015. While allowing this application (exhibit 40), the Trial Court has specifically observed that in view of the controversy involved, the appointment of court commissioner will help the court to elucidate the matter properly to have fair

disposal of the suit. After considering the submissions of both parties, the application filed by the plaintiffs was allowed by a well reasoned order. In accordance with this order, the DSLR carried out the measurement and submitted his report dated 01.10.2015, which is at exhibit 50. In the wake of this undisputed factual position, the view expressed by the DSLR that there is no 'Nimtana Mojani' with respect to the suit land, is sought to be made as a ground by the plaintiffs for filing third application and on that pretext the plaintiffs have sought for appointment of court commissioner again.

10. It has to be noted that the plaintiffs have filed the civil suit seeking possession on the basis of their pleadings in the plaint. The plaintiffs have initially applied for appointment of the TILR as court commissioner, which was granted. Thereafter, the plaintiffs have applied for appointment of the DSLR as court commissioner and the same was also granted. As such, the plaintiffs' third application for appointment of DSLR as court commissioner on the pretext of getting 'Nimtana Mojani' clearly shows that the plaintiffs are filing repeated applications till they get a favourable report of the court commissioner. Pertinent to

note that earlier two applications filed by the plaintiffs for appointment of court commissioner were allowed and despite the reports of the earlier court commissioners being on record, third application filed by the plaintiffs clearly demonstrates that the plaintiffs are collecting evidence through the court commissioner. In my considered view, the third application filed by the plaintiffs seeking appointment of court commissioner amounts to abuse of provisions of law.

11. Apart from this, it has to be noted that the plaintiffs have already raised their grievance to the measurement map of the said property bearing CTS No.2020 by way of their appeal before the DSLR, Ahmednagar, in the year 2017. The said appeal memo is tendered across the Bar in view of the order dated 09.06.2025, which is taken on record and marked as 'X' for identification purposes. In view of this appeal, it is clear that the plaintiffs have already raised their objection to the measurement map of the suit property and their third application for appointment of the same officer i.e. DSLR as court commissioner shows mischievous conduct on the part of the plaintiffs.

12. In support of his submissions, learned advocate for the plaintiffs relied upon the judgments in the matters of ***Bento Antonio Gomes alias Antonio Bento Gomes vs. Rosario Salvador Carneiro and others, AIR 2014 (NOC) (Supp) 625 (Bom)*** and ***Kashinath Chindhuji Shastri vs. Haribhau Nathuji Bawanthade, 2004(2) Mh.L.J. 722*** and submitted that since the issue of boundary dispute and encroachment has arisen in the instant matter, appointment of court commissioner is imperative.

13. The position of law as laid down in these judgments is not disputed, however, in the instant case, the court commissioners were earlier appointed at the instance of the plaintiffs and the measurements were carried out by the TILR and DSLR and despite this, the third application for appointment of court commissioner, shows that the plaintiffs want to collect evidence. As such, the judgments relied upon by the plaintiffs, are of no assistance to the plaintiffs. The position of law is well settled that the court commissioner cannot be appointed for the purpose of collecting evidence as reiterated in the judgment in ***Dinanath Supdu Joshi vs. Shriram and another, 2022 SCC***

Online Bom 6712, on which learned counsel for the defendants has placed reliance.

14. A perusal of the impugned order shows that the Trial Court has given due consideration to the crucial aspects that the plaintiffs have already filed an appeal challenging the measurement map of the suit property and further that the third application seeking appointment of court commissioner amounts to collection of evidence. After considering relevant aspects, the Trial Court has rightly rejected third application at exhibit 65 with costs of Rs.1000/-. The impugned order is well reasoned and needs no interference on any count.

15. Having regard to the above mentioned factual and legal aspects, I am of the view that the petitioners/ plaintiffs have failed to demonstrate any illegality or perversity in the impugned order. The impugned order needs no interference and the writ petition deserves to be dismissed with costs.

16. The Writ Petition is dismissed with costs upon the petitioners/ plaintiffs. Rule is discharged.