

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2813 OF 2012

Shabbir Akbar Naikwade & Ors.	}	Petitioners
versus		
Hiralal Baburao Gujar & Ors.	}	Respondents

Mr. Sandeep Koregave for petitioners.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 16, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 15th March 2012 passed by the Trial Court, by which the Trial Court allowed the application filed by the respondents for appointment of Court Commissioner for local investigation under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 (CPC).

2. Facts giving rise to filing of the present writ petition, briefly stated, are that the petitioners filed suit for injunction, wherein the respondents filed written statement and filed an application under Order XXXIX Rule 7 of the CPC. The Trial Court allowed the said application vide the impugned order dated 15th March 2012. Hence this petition.

3. I have heard learned counsel for the petitioners and perused the record.

4. Admittedly, the respondents did not file any counter claim in the suit filed by the petitioners. The plaintiffs have to succeed on the strength of their own case and in order to claim a decree, they have to adduce evidence. Filing of the application under Order XXXIX Rule 7 of the CPC, in the facts and circumstances of the case and that too at the instance of the defendants is wholly unwarranted. The impugned order, therefore, suffers from the jurisdictional infirmity as well as voice of non-application of mind.

5. In the result, the impugned order dated 15th March 2012 is quashed and set aside. Accordingly, the writ petition is allowed.

6. Let a copy of this order be communicated to the Trial Court forthwith.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE

Date: 2025.07.17
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(CHIEF JUSTICE)