

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5783 OF 2025

Shri Dhanaji Mahadeo Shinde and ... Petitioners
Ors.

V/s.

Vithal Manu Shinde and Ors. ... Respondents

Mr. Drupad Patil, for the petitioners.

Digitally
signed by
VARSHA
DEEPAK
GAIKWAD
Date:
2025.05.13
13:35:28
+0530

CORAM : N.J. JAMADAR, J.

DATE : 6th MAY 2025.

PC:

1. Heard learned counsel for the petitioners.
2. The challenge in this petition is to an order dated 30th January 2025, passed by the learned Civil Judge whereby the Taluka Superintendent of Land Records has been appointed as a Court Commissioner to have a joint measurement of block Nos. 514 and 515 and prepare a map and submit a report to the Court.
3. The respondents-plaintiffs have instituted the suit for a declaration that, the plaintiffs are the owners and in possession of the suit land; that the defendants be restrained from causing obstruction to the possession of the plaintiffs over the suit land, and the encroachment allegedly committed by defendant nos. 1 and 2 over a portion of the suit land be removed and vacant possession of the

allegedly encroached portion be delivered to the plaintiffs.

3. In the said suit, the plaintiff had initially filed applications for the appointment of the Court Commissioner. The said application came to be rejected by orders dated 20th September 2021 and 3rd August 2023. The plaintiff again filed an application for appointment of Court Commissioner (Exhibit-76) asserting that the erection of unauthorised structure over the suit land by the defendants continued unabated. It was, therefore, necessary to appoint a Court Commissioner to elucidate the matter.

4. By the impugned order, the learned Civil Judge was persuaded to allow the application and appoint the Taluka Superintendent of Land Records as the Court Commissioner.

5. The learned counsel for the petitioners submitted that the Trial Court had initially rejected two applications for the appointment of Court Commissioner. The said orders attained finality. The suit is essentially for a declaration of title.

6. In these circumstances, the Trial Court could not have allowed the third application for the appointment of the Court Commissioner. That would amount to an exercise of collection of evidence.

7. I have perused the averments in the plaint. There are explicit averments and a specific prayer that the defendant nos. 1 and 2 have committed encroachment over a portion of the suit land and a decree for removal of encroachment be passed.

8. It is true, the plaintiffs are also seeking declaration of title over

the suit property. That, however, does not necessarily imply that the question of removal of encroachment does not arise in such a situation. If the plaintiffs fail to establish title, no further enquiry would be warranted.

9. However, in the event, if the plaintiffs succeed in establishing the title over the suit property, the further enquiry as to whether the defendants have committed encroachment over the portion of the suit property, as alleged, would become necessary.

10. Therefore, the learned Civil Judge does not seem to have committed any error in exercising the discretion to appoint a Court Commissioner. Since the dispute essentially revolves around the demarcation of the land and allegations of encroachment have been made, the Court Commissioner's report would assist the Court in arriving at a just decision of the case as it would elucidate the matter in controversy.

11. Resultantly, in exercise of supervisory jurisdiction, this Court does not find any infirmity in the impugned order.

12. The petition stands disposed.

(N.J. JAMADAR, J)