

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

WRIT PETITION NO. 13359 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Iliyas Jainuddun Jahagirdar and anr. ...Petitioners

Versus

Jainuddin Rahimsaheb Jahagirdar and anr. ...Respondents

Mr. Rajesh Sarvade, for the Petitioners.

Mr. Chaitanya Nikte, a/w Abid Mulani and Ashish Agarkar, for
Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 4th FEBRUARY, 2025

ORDER:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 16th March, 2024 passed by the learned Civil Judge, Karmala, appointing Deputy Superintendent, Land Record, Karmala, as a Commissioner to measure the suit land.
3. The suit was initially instituted for perpetual injunction only. An application for appointment of Court Commissioner was filed. The said application came to be rejected. Subsequently, the plaintiff amended the plaint and allegations of encroachment over a portion of the property of the plaintiff have been made. Thereafter instant application for appointment of Court Commissioner (Exhibit-25) came to be filed.

4. By the impugned order, the learned Civil Judge was persuaded to allow the application observing *inter alia* that in view of the amendment in the plaint as an issue of encroachment arises for consideration, it would be expedient to appoint the Court Commissioner.

5. The learned Counsel for the petitioners submitted that though on paper division of the property has been shown, yet, there was no actual division at site. Since the suit was initially instituted for injunction only, the trial court committed an error in appointing the Court Commissioner.

6. I am unable to accede to the submission of the learned Counsel for the petitioners. In view of the amendment in the plaint, the question as to whether there is encroachment over a portion of the suit property arises for adjudication. The learned Civil Judge has committed no error in directing the Deputy Superintendent, Land Record, to measure the entire Gat No.177 and sub-divisions into which the said Gat number has been divided, and submit a report to the Court. The report of the Court Commissioner would assist the Court in adjudicating the dispute effectively as it would elucidate the matter in controversy.

7. The Court does not find any infirmity in the order.
8. The Petition stands dismissed.

[N. J. JAMADAR, J.]