

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11418 OF 2025

Anil Shivram Patil & Ors.

.....Petitioners

Vs.

Shobha Sharanbasappa

Manglure & Anr.

.....Respondents

Mr. Anvil S. Kalekar, for Petitioners.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 30th SEPTEMBER 2025

P.C.:-

1. The Petitioners/Original Defendants in Regular Civil Suit No.438 of 2025 pending before Civil Judge, Senior Division, Solapur, impugns order dated 19th August 2025 passed below Exhibit-43 by which prayer for appointment of Court Commissioner has been declined.

2. The Plaintiffs instituted suit seeking decree of perpetual injunction against Defendants. The Defendants filed written statement along with counterclaim seeking decree of perpetual injunction against Plaintiffs. Subsequently, Defendants filed an Application below Exhibit-70 seeking appointment of Court

Commissioner on the ground that Defendant Nos.1 to 6 holds 27 acres land, whereas Plaintiff claims ownership of 3 hectares of land on the basis of a sale deed. However, land purchased by Plaintiffs is not property demarcated and therefore, it is necessary to appoint Court Commissioner to bring on record exact position of lands on spot.

2. The Application was opposed on behalf of Plaintiffs on the ground that it is an attempt to collect evidence and appointment of Commissioner would not be necessary looking to the controversy dispute in suit.

3. The Trial Court after considering pleadings of parties observed that Plaintiffs as well as Defendants both are claiming respective possession over suit properties. According to Defendants, suit properties are part of agricultural land within their ownership, whereas Plaintiffs are claiming their ownership on and possession within boundaries mentioned in their sale deed.

4. It is trite that, where party seeking relief of perpetual injunction asserts possession, it is for him to establish same by bringing necessary evidence. The Court Commissioner cannot be appointed to ascertain the possession of party.

5. It is well settled that appointment of Court Commissioner is permissible only when there is dispute as to boundaries and encroachment over property. In present case, when Plaintiffs as well as Defendants are ascertaining their respective possession over property within ownership, *prima facie*, dispute as to boundaries or encroachment is not discernible on record.

6. However, once parties renders their evidence during trial and if evidence depicts that there is dispute as to demarcation of boundaries, it would be open for Court to take a call to exercise power under order 26 Rule 9 of Civil Procedure Code for appointment of Court Commissioner.

7. In that view of matter, no infirmity or jurisdictional error is brought to notice of this Court from impugned order. There is no merit in Writ Petition. Hence, Writ Petition stands **rejected**.

8. Needless to state here that, in case occasion arises, Trial Court may consider to appoint Commissioner after recording evidence of parties and in that eventuality, observation made in impugned order would not be an impediment.

(S. G. CHAPALGAONKAR, J.)