

VRJ

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

WRIT PETITION NO.12207 OF 2025

VAIBHAV
RAMESH
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Dagdu Damaji Kamble & Ors.

... Petitioners

V/s.

Subhash Shripati Kamble

... Respondent

Mr. Tehjeej A. Nadaf for the petitioners.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : NOVEMBER 19, 2025

P.C.:

1. Petitioners impugn order dated 18th September 2025 passed by Civil Judge, Junior Division, Panhala below Exhibit 26 in Regular Civil Suit No.58 of 2025, whereby an application filed by petitioners/original defendants under Order XXXIX Rule 7 of Civil Procedure Code, 1908 has been rejected.

2. Petitioners are defendants in Regular Civil Suit No. 58 of 2025. The respondent instituted said suit seeking a decree of perpetual injunction against defendants. It is contention of the plaintiff that he has purchased suit property from original owner. Thereafter, he dug borewell, installed an electric motor pump, and

has been cultivating various crops. However, defendants are raising disputes and causing obstruction to his peaceful possession. The defendants caused their appearance and refuted claim of plaintiff, and denied that plaintiff is in possession of suit property. In this background, defendants filed an application under Order XXXIX Rule 7 of Civil Procedure Code, 1908, seeking appointment of a Court Commissioner to bring on record position on the spot at lands Gat Nos. 3 and 4. It is contention of defendants that plaintiff is relying upon false evidence and he has neither constructed a well nor way to approach suit land.

3. The Trial Court, after considering rival contentions, rejected petitioners' application by impugned order dated 18th September 2025.

4. Mr. Nadaf, learned advocate appearing for petitioners, submits that petitioners are in possession of property. So-called sale deeds relied upon by plaintiff were not transactions of sale. The plaintiff has never constructed any well in the suit land but trying to create false evidence. Therefore, inspection of land through Court Commissioner is necessary.

5. The Trial Court observed that provisions under Order XXXIX

Rule 7 of Civil Procedure Code, 1908 cannot be invoked for reasons as stated in application.

6. Apparently, plaintiff has filed a suit seeking a perpetual injunction against defendants. He relied upon a copy of sale deed and 7/12 extract in respect of property. The entry as to borewell appears in 7/12 extract. Similarly, contents of the sale deed depict existence of an approach road. Even otherwise, it is for the plaintiff to prove his possession over suit property. In this background, there is no reason to appoint a Court Commissioner in exercise of powers conferred under Order XXXIX Rule 7 of Civil Procedure Code, 1908.

7. In this background, no jurisdictional error can be found in impugned order. In result, writ petition sans merit, hence rejected.

8. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)