

VRJ

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

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WRIT PETITION NO.11191 OF 2025

Dattatray Shrirang Vyavahare
Through Its Power of Attorney
Vilas Yashvant Vyavahare

... Petitioner

V/s.

Girish Kisanrao Bembalkar & Ors.

... Respondents

Mr. Umesh R. Mankapure with Om U. Mangave i/by
Rati S. Sinhasane for the petitioner.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : SEPTEMBER 12, 2025

P.C.:

1. Present writ petition takes exception to order dated 26th August 2025 passed below Exhibit – 17 in Regular Civil Suit No.503 of 2022 by learned Joint Civil Judge, Junior Division, Pandharpur. The petitioner is original plaintiff in said suit. He filed a suit seeking decree of perpetual injunction against defendants in respect of suit road. It is the contention of plaintiff that suit road goes through his private property and is in his personal use. The defendants are trying to claim a right and use it publicly. Therefore, he instituted a suit seeking decree of perpetual injunction. The respondents–defendants, however, filed a written statement contending that suit road is in use by them as well as by

villagers as a public road to approach Pandharpur–Tembhurni highway. Apparently, controversy involved in suit as to whether suit road is a public road or private property of plaintiff in which defendants have no right at all. In this background, petitioner filed application below Exhibit-17 seeking appointment of a Court Commissioner to ascertain alternate access way for defendants.

2. The learned Trial Court referred to the provisions of Order XXVI Rule 9 so also provisions of Order XXXIX Rule 7 of the Civil Procedure Code, 1908, and observed that this is not a case where there is a boundary dispute. The plaintiff is seeking an injunction to restrain the defendants from causing obstruction to his possession over the suit land, more particularly to fencing of suit boundary. It would be for plaintiff to prove exclusive ownership and possession over suit way, similarly defendants will have to establish easementary right to use way.

3. The defendants are claiming that suit road is in use as a public road and asserting a right to use for themselves and villagers. In these circumstances, controversy involved in suit does not warrant appointment of a Court Commissioner. The view taken by Trial Court appears to be in tune with well-settled legal position as to parameters of exercise of jurisdiction under Order XXVI Rule 9 or Order XXXIX Rule 7 of the Civil Procedure Code, 1908.

4. In that view of the matter, this Court does not find any substance in writ petition. The writ petition stands rejected and disposed of.

(S. G. CHAPALGAONKAR, J.)