



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4428 OF 2019

(Madan Mulchand Purohit and another vs. Samadhan Shrawan Bharaskale)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Aniket Sawal, Advocate h/f Mr. H.R.Gadhia, Advocate for petitioner.

CORAM : SIDDHESHWAR S. THOMBRE, J.
NOVEMBER 18, 2025

- 1) Heard learned counsel for the petitioner.
- 2) By way of present petition, the petitioner, who are plaintiffs challenges the order dated 19/03/2019, passed below Exh.34 by the 5th Joint Civil Judge, Junior Division, Khamgaon in R.C.S.No.155/2012 whereby the application for appointment of Court Commissioner came to be rejected.
- 3) Learned counsel for the petitioner submits that as the defendant have encroached upon the suit property, therefore, to ascertain the actual extent of encroachment of the suit property, it is necessary that the said property should be measured by Taluk Inspector of Land Records (TILR), thereafter, report will help the plaintiffs to prove their case.
- 4) The defendant opposed the said application. Learned Trial Court while considering the order below Exh.34 observed that suit is for declaration and possession has been pending since 2012 and it was observed that evidence of PW-1 is already over and in the application there is no specific reasons given by the plaintiff for appointing Court Commissioner. It was further

observed by the learned Trial Court that something against the petitioner was brought on record during cross-examination and therefore, to fill up lacuna, said application came to be filed.

- 5) I have gone through the order passed by Jt.CJJD and relevant documents on record.
- 6) Learned counsel for the petitioners relied upon the judgments of this Court in *Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade 2011 (3) Mh.L.J.348* and *Shantaram Dattatray Kekan and others vs. Bhausahab Karbhari Kekan and another [Writ Petition No.14046 of 2021 decided on 05/12/2022]* in support of his contention.
- 7) Considering the fact that the suit is for declaration and possession of the suit property, the plaintiffs cannot be permitted to collect the evidence or fill up lacuna at this stage. Therefore, above cited judgments are not applicable to the present petition.
- 8) On perusal of the order passed by the learned Trial Court, I find that the reasons recorded by the learned Trial Court, are reasonable and proper. Therefore, I do not find any reason to interfere with the findings recorded by the learned Trial Court. Hence, the present petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)