

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

**WRIT PETITION NO. 7275 OF 2024**

Narayan S/o Rajaram Gadhe

Vs.

Narahari S/o Totaram Sultane

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

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Court's or Judge's orders

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Shri A.V. Bhide, Advocate for petitioner  
Shri N.B. Karade, Advocate for respondent

**CORAM : SMT M.S. JAWALKAR, J.**

**DATE : 02/01/2025**

Heard learned Counsel for the petitioner and  
learned Counsel for the respondent.

2. The petitioner challenged the order passed by the Joint Civil Judge Junior Division, Shegaon, rejecting his application for appointment of Court Commissioner under Order XXVI, Rule 9 of the Civil Procedure Code, 1908. The petitioner filed suit for declaration and permanent injunction. Earlier application came to be rejected by Civil Judge Junior Division, Shegaon, on the ground that the application for appointment of Court Commissioner came to be filed at the stage of final argument and four witnesses have already been examined by the plaintiff. As matter was time bound and was

at the stage of final hearing, application came to be rejected, which petitioner challenged in Writ Petition No. 4558/2024, wherein, this Court set aside the order and Trial Court was directed to decide the application on the point whether there is need of appointment of Court Commissioner or not. Accordingly, the learned Trial Court considered the matter afresh and passed order on 28/11/2024, rejecting the application for appointment of Court Commissioner.

3. It is the contention of learned Counsel for petitioner, Shri Bhide, that in the pleading, plaintiff has specifically pleaded that his field is land-locked and there is no way to approach his field. The only way is passing through gat No. 83. It is also claimed by the plaintiff in the pleading that the said pathway was there since last forty years and prior to plaintiff erstwhile owner was also using that way. Therefore, he is entitled to use that way to approach his field in gat No. 85.

4. As against this, learned Counsel for respondent drawn my attention to the contents of the application filed by the plaintiff, wherein, it is specifically mentioned that, 'it is a case of the plaintiff that there is deep Nala towards North of the land of the plaintiff and the adges are too high. So that it is improbable and impracticable to use as an approach way for his field gat No. 85.'

5. In my considered opinion, learned Trial Court rightly appreciated this fact in paragraph No. 15, that plaintiff is seeking local inspection of the alternate way i.e. approach way to his land from gat No. 83 from the Northern side and not about the suit property. If the report of the Commissioner has nothing to do with the subject matter in the dispute, in such circumstances, it would not be appropriate to grant permission for local investigation. Admittedly, dispute is regarding the easementary right of pathway. The evidence is led on that count. In view thereof, the Trial Court has rightly rejected to exercise its discretion to appoint Court Commissioner. As such, I do not see any infirmity or illegality in the order passed by the learned Trial Court. Accordingly, petition is rejected and disposed of.

**(SMT M.S. JAWALKAR, J.)**