



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

WRIT PETITION NO.3531 OF 2025

(Shri Bhiva s/o Ratan Bhagwat, since deceased (9.10.2023) thr. legal heirs, Shri
Rahul s/o Bhiva Bhagwat and others Vs. Shri Rajesh s/o Baburao Thool and another)

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

Court's or Judge's orders.

Mr. R. D. Dharmadhikari, Advocate for Petitioners.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATE: 23rd JULY, 2025.

1. Heard Mr. Dharmadhikari, learned counsel for the petitioner.

2. Petitioner challenges order dated 25.11.2024 passed by the first Appellate Court in Regular Civil Appeal No.100354/2013, rejecting the application seeking appointment of Commissioner filed by the appellant who was original plaintiff. Learned counsel for the petitioner submits that in view of the controversy involved issue relates to encroachment and appointment of Taluka Inspector of Land Records as Court Commissioner was necessary and although the application was not filed before the learned trial Court, the same ought to have been entertained by the appellate court. In support of his submission he relies on the judgment in *Sulemankhan s/o Mumtajkhan and others v. Bhagirathibai wd/o Digamber Asalmol and another* reported in *2014 SCC OnLine Bom 2839* and *Kashinath s/o Ramkrishna Chopade v. Purushottam Tulshiram Tekade and*

others reported in *2005 SCC OnLine Bom 668*. He also submits that the application was filed under Order 26, Rule 9 of the Code of Civil Procedure and the appellant has not invoked provisions of Order 41, Rule 27 of the CPC and hence the impugned order is erroneous.

3. Issue notice to the respondents, returnable on 13.08.2025.

(PRAFULLA S. KHUBALKAR, J.)