



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1082 OF 2026

ASHRUBA NAMDEV GADADE AND ANOTHER
VERSUS
BALASAHEB BANSI ADHAV AND OTHERS

...
Mr. P. P. More, Advocate for the Petitioners.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th FEBRUARY, 2026.

P.C.:-

1. The present petition is filed with following prayer:-

“B. Issue writ of certiorari or any other appropriate writ order or direction kindly quash and set aside the impugned order dated 08.05.2024 passed by the learned Civil Judge Junior Division, Majalgaon, Tq. Majalgaon, Dist. Beed in Regular Civil Suit No.23/2020 on application below Exh.37 and consequently the application below Exh.37 may kindly be allowed.”

2. The petitioners are plaintiffs in Regular Civil Suit No.23/2020. The suit is filed for relief of declaration of ownership and perpetual injunction in respect of property, which is specified in plaint paragraph no.1. The plaintiffs have specifically pleaded that they are in possession of property on the basis of sale deed and respondents are obstructing their possession.

3. In light of aforesaid pleadings, plaintiffs have filed application below Exhibit-37 seeking appointment of Court Commissioner on ground that defendants are trying to make encroachment and obstructing petitioners' cultivation over suit

property. Therefore, exact encroachment carried by defendants has to be brought on record through expert appointed by Court i.e. Court Commissioner.

4. The Trial Court refused to entertain aforesaid application firstly on ground that suit is filed seeking relief of declaration and injunction and not recovery of possession of encroached portion. The plaintiffs' evidence is not yet recorded and, therefore, there is no cause for directing appointment of Court Commissioner.

5. Apparently, observations of Trial Court are in tune with pleadings of plaintiffs and record. The plaintiffs have not recorded their evidence. In case, plaintiffs bring necessary material on record showing that during pendency of proceeding some encroachment has been caused on their property, plaintiffs may amend pleadings and prayer appropriately and seek appointment of Court Commissioner. However, in wake of pleadings as on record and stage of suit that evidence of plaintiffs is not yet recorded, view taken by Trial Court does not warrant interference under Article 227 of Constitution of India.

6. Needless to state here that, in case petitioners make out further case for appointment of Court Commissioner after bringing necessary material on record, or if required, by amending pleadings

and prayers, they shall be at liberty to make such an application, which shall be considered on its own merits.

7. Writ Petition stands disposed of with aforesaid observations.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2026