



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO. 3402 OF 2026

KHAIRUNISA BEGAM SAYYAD ARODDIN JAHAGIRDAR AND ANOTHER
VERSUS
EKNATH BHIMRAO PATANGE AND OTHERS

...
Mr. Satish P Dhobale – Advocate for Petitioners
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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 01.04.2026

PER COURT :

1. The petitioners/original plaintiffs impugn order dated 15.12.2025 passed below Exhibit-29 by Civil Judge, Junior Division, Omerga, in Regular Civil Suit No. 495 of 2023, whereby application filed by petitioners seeking appointment of a Court Commissioner came to be rejected.
2. The petitioners have instituted the suit seeking a decree of declaration of ownership and perpetual injunction in respect of Gram Panchayat House No. 1624 admeasuring 50 ft. × 40 ft. The petitioners have also prayed for a decree of perpetual injunction restraining the defendants from interfering with their alleged possession.
3. During pendency of the suit, petitioners filed an application at Exhibit-29 seeking appointment of a Court Commissioner, contending

that Government of Maharashtra had acquired adjacent land forming part of Gut No. 1984 and certain plots were allotted to villagers. It was further contended that defendant Nos. 1 and 2 were allotted a plot in the Gaothan in year 1994. In collusion with Gram Panchayat authorities and Deputy Superintendent of Land Records they got their plot area enhanced to 2000 sq. ft. from original area of 443.85 sq. ft., and thereby encroached upon land bearing Gat No. 40. On this premise, the petitioners sought appointment of a Court Commissioner to measure the boundaries of Gat No. 40.

4. The Trial Court, while rejecting said application, observed that suit is primarily one for declaration of ownership and perpetual injunction in respect of the suit house. It is not the case of petitioners, as pleaded in the suit, that defendants have encroached upon the suit property. Rather, the petitioners are attempting to establish alleged encroachment in respect of Gat No. 40, which is not the subject matter of the suit. In such backdrop, appointment of Court Commissioner would amount to collection of evidence.

5. Upon consideration of the conspectus of the pleadings and the nature of the reliefs sought, this Court finds that the petitioners claim to be in possession of the suit property. Even assuming that there is an allegation of encroachment, same pertains to Gat No. 40, which is not the suit property and nor have petitioners sought any consequential relief

such as recovery of possession in respect thereof by amending the plaint.

6. In this backdrop, this Court is of the view that the Trial Court was justified in declining prayer for appointment of a Court Commissioner, as the same would not aid in adjudication of issues arising in the suit and would instead amount to collection of evidence.

7. In the result, no jurisdictional error is discernible in the impugned order. Hence, Writ Petition stands rejected.

8. Pending Civil Applications, if any, also stand disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Pooja Kale/