

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4747 OF 2026

Dattatray Bhagwant Walke And Others

VERSUS

Shashank Vitthalrao Walke And Others

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Advocate for the Petitioner : Mr. Latange Vijay Prabhakar Rao

Advocate for Respondent Nos.1 & 2 : Mr. D.R. Jayabhar

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : APRIL 29, 2026

PER COURT :-

1. Present petition takes exception to order dated 13.03.2026 passed by Civil Judge Senior Division, Ahmednagar below Exhibit-28 in R.C.S. No.367 of 2025, whereby petitioners application for appointment of Court Commissioner has been rejected.

2. The petitioners are defendants in suit. The respondents/plaintiffs instituted suit for relief of declaration of ownership and perpetual injunction. The petitioners/defendants appeared in suit and filed written statement rebutting averments in plaint. While application for temporary injunction filed by respondents is pending, petitioners filed an application below Exhibit-28 seeking appointment of Court Commissioner by exercising powers under Order 26 Rule 9 of Civil Procedure Code.

3. The Trial Court declined to entertain such application on the ground that application is filed at premature stage. Secondly, parties will have to establish their case on the basis of evidence to be led during course of trial.

4. Having considered submissions advanced by learned advocates appearing for respective parties, there appears a dispute as regards to ownership and possession of suit property. In such a case, parties need to establish their case during course of trial. The Trial Court is required to render findings against issues framed in suit. Although, it is contention of petitioners that property owned by plaintiffs and defendants has been demarcated as per oral partition and there is north-south bandh/bund in between their houses, Court Commissioner cannot be appointed to ascertain possession of parties. The purpose for appointment of Commissioner is not collection of evidence. However, in case, after recording of evidence, the Trial Court believes that appointment of Commissioner is necessary for effective adjudication of dispute between the parties, such exercise would be permissible.

5. However, at the stage, when suit is yet to reach stage of evidence, this Court finds that there is no reason to entertain application for appointment of Court Commissioner particularly for purpose of ascertaining possession of parties. The Trial Court appears to have rightly considered factual and legal aspects of matter. No jurisdictional error requiring interference in impugned order under Article 227 of Constitution of India is discernible. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)