



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

WRIT PETITION NO. 2400 OF 2025

- 1) Pralhad S/o. Mhatarba Zore,
Age : 65 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 2) Atmaram S/o. Mhatarba Zore,
Age : 62 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 3) Smt. Dropati Wd/o. Gangadhar Zore,
Age : 57 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 4) Sunil S/o. Gangadhar Zore,
Age : 47 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 5) Archana Waman Sakhare,
Age : 37 Years, Occu. : Household,
R/o. Deulgaon (Raja), Dist. Buldhana.
- 6) Yashwant S/o. Tulshiram Zore,
Age : 66 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 7) Tryambak S/o. Tulshiram Zore,
Age : 69 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 8) Chhaganrao S/o. Gopalrao Mehetre,
Age : 62 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.

- 9) Dropadibai Dilip Zore,
Age : 52 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 10) Amol Dilip Zore,
Age : 28 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.
- 11) Shriram Mhatarba Zore,
Age : 67 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Dist. Buldhana.

.... Petitioners

VERSUS

Shankar S/o. Shamrao Mehetre,
Age : 50 Years, Occu. : Agriculturist,
R/o. Sindkhed (Raja), Tq. Sindkhed (Raja),
Dist. Buldhana.

.... Respondent

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Advocate for Petitioners : Mr. A.J. Thakkar
Advocate for Respondent : Mr. D.M. Kale

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CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 02nd FEBRUARY 2026

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. By this petition, the petitioners have challenged the order dated 07.02.2025, directing the appointment of Court Commissioner and order dated 11.10.2024, seeking rejection of plaint, passed by Civil Judge Junior Division, Sindkhed Raja, in Regular Civil Suit No.141 of 2023, at Exhibit 27 and 36, respectively

4. The petitioners are original defendants in the suit filed by the respondent, seeking declaration and permanent injunction. In the suit, the plaintiff filed an application under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), at Exhibit 27, seeking appointment of a Court Commissioner to inspect the disputed cartway, which was ordered to be opened by the Mamlatdar Court *vide* order dated 10.11.2023. The said application was resisted by the defendants, however, same is allowed by the trial court *vide* order dated 07.02.2025, directing appointment of an Advocate as a Court Commissioner. In the said suit, the defendants had filed a separate application at Exhibit 36, seeking rejection of plaint alleging that the prayer in the suit is with respect to the declaration about the order passed by the Mamlatdar and hence, the plaint deserved to be rejected. This application came to be rejected by order dated 11.10.2024. Both the orders are challenged by way of instant petition.

5. Learned Advocate for the petitioners submitted that a spot inspection was already conducted before passing of the order by the Mamlatdar and the original plaintiff-respondent was personally present at that time. Hence, there is no need for appointment of any Court Commissioner. He submitted that the plaintiff has sought for appointment of Court Commissioner for collection of evidence, which is not permissible and the application deserved to be rejected. He submitted that, since the controversy was already decided by the proceedings before the Mamlatdar, a separate suit in that regard is not maintainable and therefore, the application for rejection of plaint ought to have been allowed.

6. While opposing the petition, learned Advocate for the respondent submitted that the trial court has rightly considered the controversy involved in the suit and having found necessity of inspection of the suit property, the trial court has rightly directed the appointment of an Advocate as a Court Commissioner. He submitted that the spot inspection although conducted earlier cannot be made basis for deciding the controversy involved in the suit. As regards the application for rejection of plaint, he submitted that the parties are always entitled to initiate appropriate civil proceedings despite any other proceedings before the Mamlatdar and the plaintiff cannot be

deprived of an opportunity to contest the civil suit on merits. He, therefore, supported the impugned orders.

7. While considering the controversy involved in the petition, it has to be noted that the trial court has directed the appointment of Court Commissioner to inspect the disputed cartway, which is found necessary for deciding the actual controversy involved in the suit. Although a spot inspection was earlier conducted, record reveals that it was done by the Talathi on 15.06.2022 and the same cannot be made basis to conclusively decide the rights of the parties sought to be agitated by way of the civil suit. The trial court has given due consideration to the factual and legal aspects and having found that the earlier spot inspection conducted by the Talathi cannot be considered to be conclusive for determining the controversy, directed the appointment of Court Commissioner. I do not find any perversity in the impugned order.

8. As regards the challenge to the order passed on an application under Order VII, Rule 11(d) of C.P.C., for rejection of plaint, it has to be noted that the position of law is clarified by the Co-ordinate Bench of this Court in judgment dated 11.01.2022, passed in *Second Appeal No.111 of 2017 (Digambar S/o. Vitthal Kale and Others Vs. Vasant S/o. Kacharu Kale and Others)*, on which

learned Advocate for the respondent has placed reliance. Learned Advocate for the petitioners does not dispute the position of law.

9. It has to be noted that the suit filed by the plaintiff will be decided on the basis of evidence to be brought on record and at this stage, only on the basis of averments in the plaint, it cannot be concluded that the plaint deserved to be rejected under Order VII, Rule 11(d) of C.P.C. A perusal of the impugned order shows that the trial court has given due consideration to the factual and legal aspects. I do not find any perversity in the impugned order.

10. Having regard to the above mentioned factual and legal aspects, no indulgence is warranted under Article 227 of the Constitution of India with the impugned orders. Hence, the writ petition is dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

asd