



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

WRIT PETITION NO. 4737 OF 2025

1. Shivaji Maroti Deokar, Aged 43 years, Occ:
Agriculturist.
2. Wasudev Maroti Deokar, Aged 47 years, Occ:
Agriculturist.
3. Kishor Rameshvar Deokar, Aged 34 years, Occ:
Service.
4. Gayabai Rameshvar Deokar, Aged 57 years, Occ:
Agriculturist.
5. Usha Jagannath Deokar, Aged 40 years, Occ:
Agriculturist.
6. Bhaskar Maroti Deokar, Aged 40 years, Occ:
Occ: C.A.

R/o At Nagzari (Bu.), Tq. Mehkar, District Buldana.

PETITIONERS

VERSUS

1. Badrinath Bhagwan Deokar, Aged years, Occ:
Agriculturist.
2. Bhanudas Prabhakar Deokar, Aged 45 years, Occ:
Agriculturist.
3. Shyam Bagwat Deokar, Aged years, Occ:
Agriculturist.
4. Ganesh Digamber Deokar, Aged 42 years, Occ:
Agriculturist.
5. Jyoti Ganesh Deokar, Aged 38 years, Occ:
Agriculturist.
6. Kasabai Gajanan Deokar, Aged 40 years, Occ:
Occ: Agriculturist.
7. Bhagwat Shyamrao Deokar, Aged 40 years, Occ:
Agriculturist.
8. Usha Bhagvat Deokar, Aged 36 years, Occ:
Agriculturist.
9. Pradeep Nivrutti Kate, Aged 40 years, Occ:
Agriculturist.
10. Dwarkabai Bhanudas Deokar, Aged 41 years, Occ:
Agriculturist.
11. Gajanan Shyamrao Deokar, Aged 47 years, Occ:
Agriculturist.

12. Monoj Pralhad Kusumbe, Aged 40 years, Occ:
Occ: Agriculturist.
13. Rajendra Bhagwan Deokar, Aged 48 years, Occ:
Agriculturist.
14. Vaibhav Rajendra Deokar, Aged 19 years, Occ:
Agriculturist.
15. Kanchan Rajendra Deokar, Aged 45 years, Occ:
Agriculturist.
16. Haridas Pralhad Deokar, Aged 45 years, Occ:
Agriculturist.
17. Atmaram Ananda Deokar, Aged 65 years, Occ:
Agriculturist.
18. Ambadas Haribhau Pawar, Aged 42 years, Occ:
Occ: Agriculturist.
19. Anuradha Ambadas Deokar, Aged 39 years, Occ:
Agriculturist.
20. Bhagwat Prabhakar Deokar, Aged 44 years, Occ:
Agriculturist.
21. Sitaram Sakharam Deokar, Aged 67 years, Occ:
Agriculturist.
22. Manish Sukhdev Shelke, Aged 55 years, Occ:
Agriculturist.
23. Umesh Shankar Deokar, Aged 26 years, Occ:
Agriculturist.
24. Sudhakar Madhukar Deokar, Aged 41 years, Occ:
Occ: Agriculturist.
25. Changunabai Shankar Deokar, Aged 52 years, Occ:
Agriculturist.
26. Varsha Umesh Deokar, Aged 39 years, Occ:
Agriculturist.
27. Prabhakar Maroti Deokar, Aged 60 years, Occ:
Agriculturist.
28. Subham Bhanudas Deokar, Aged 19 years, Occ:
Agriculturist.
29. Deva Badrinarayan Deokar, Aged 19 years, Occ:
Agriculturist.
30. Sunita Badrinarayan Deokar, Aged 45 years, Occ:
Occ: Agriculturist.
31. Suresh Atmaram Deokar, Aged 41 years, Occ:
Agriculturist.

32. Haribhau Sakharam Deokar, Aged 63 years, Occ: Agriculturist.
33. Vijaya Shyam Deokar, Aged 39 years, Occ: Agriculturist.
34. Harichandra Sukram Wabade, Aged 42 years, Occ: Agriculturist.
35. Sachin Subhas Gavai, Aged 42 years, Occ: Agriculturist.
36. Rameshwar Sitarma Deokar, Aged 41 years, Occ: Occ: Agriculturist.
37. Manisha Sudhakar Deokar, Aged 35 years, Occ: Agriculturist.
38. Durga Keshav Deokar, Aged 38 years, Occ: Agriculturist.
39. Mahadu Laxman Deokar, Aged 58 years, Occ: Agriculturist.
40. Hrusikesh Ravindra Avasarmol Aged 20 years, Occ: Agriculturist.
41. Vishnu Pandurang Deokar, Aged 42 years, Occ: Agriculturist.
42. Janabai Harichandra Wabade, Aged 43 years, Occ: Occ: Agriculturist.
43. Lata Mangesh Pawar, Aged 39 years, Occ: Agriculturist.
44. Digambar Vithoba Deokar, Aged 60 years, Occ: Agriculturist.
45. Shankar Bhawan Deokar, Aged 59 years, Occ: Agriculturist.
46. Mangesh Haribhau Pawar, Aged 45 years, Occ: Agriculturist.

All Respondents 1 to 46 are R/o at Nagzari (Bu.)
Tahsil Mehkar, District Buldana.

RESPONDENTS

Shri Bhushan Mohta, counsel for the petitioners.
Shri Kapil Deshmukh, counsel for the respondent nos.1 to 3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : APRIL 18, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioners have challenged the order dated 21.10.2024 passed by the trial Court allowing an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short, 'the Code') for appointment of Court Commissioner.

3. The petitioners are the original defendants in Regular Civil Suit no.48 of 2023 filed by the respondents in representative capacity seeking mandatory injunction for removal of obstruction in the approach way as stated in the plaint. The defendants appeared in the suit and filed their written statement. Before the stage of evidence, the plaintiffs filed an application under Order XXVI Rule 9 of the Code and prayed for appointment of Court Commissioner for inspection of the spot to ascertain the factual position. The application was opposed by the defendants, however by the order dated 21.10.2024, the trial Court allowed the said application and directed appointment of an Advocate as Court Commissioner to visit the spot and after conducting spot inspection, report the factual position to the Court. The defendants have challenged this order by way of instant petition.

4. Shri Bhushan Mohta, learned counsel for the petitioners submitted that the appointment of the Court Commissioner even before any evidence is led by the plaintiffs is clearly an attempt to collect evidence which is not permissible in law. He submitted that the petitioners-defendants in the suit are the owners of their property and there is no case of encroachment being committed by the defendants and as such the appointment of Court Commissioner is not at all warranted.

5. Opposing the petition, Shri Kapil Deshmukh, learned counsel for the respondent nos.1 to 3 submitted that the appointment of the Court Commissioner to ascertain the physical status of the approach way is found necessary by the trial Court and the report of the Court Commissioner will assist the Court in determination of the actual controversy. He submitted that the defendants have obstructed the approach way of the villagers and hence they have filed the suit in representative capacity seeking permanent injunction for removal of obstruction. He further submitted that the impugned order directing the Court Commissioner to inspect the spot and submit a fact finding report cannot be considered to be an attempt to collect the evidence. By relying on the judgment of the Principal Seat in ***Pandit Vithal Landage Versus Vishnu Govind Pawar & Another*** [Writ Petition no.5158 of 2024], dated 30.04.2025, he submitted that in view of Section 75 and Order XXVI Rule 9 of the Code, the Court Commissioner can be appointed for elucidation of the matter in controversy and there is no prohibition to appoint a Court Commissioner even before the evidence is conducted.

6. While dealing with the rival contentions, it has to be noted that the trial Court has directed appointment of the Court Commissioner for ascertaining factual position. The plaintiffs in the suit have asserted that the defendants have obstructed their regular approach way by putting certain wooden logs on their approach way and this impediment is required to be removed for allowing the villagers to use the approach way. As such, the assertion of the plaintiffs about obstruction being created by

the defendants is disputed by the defendants and the Court found it necessary to get the factual position ascertained with the assistance of the Court Commissioner. Pertinently, this is not a case of removal of encroachment requiring measurement of any land and in view of the controversy, a neutral opinion of the Court Commissioner is found necessary by the trial Court.

7. As regards the contention of the petitioners that the Court Commissioner is appointed before the stage of evidence, it has to be noted that there is no prohibition about exercise of powers under Order XXVI Rule 9 of the Code by the Court for getting assistance at any stage. In this regard, it is fruitful to refer to the pertinent observations in paragraph 11 of the judgment of the Principal Seat in ***Pandit Vithal Landage*** (supra), which is reproduced below:-

“11. From the text of Section 75 and Order XXVI Rule 9 of the CPC, restraint on the power of the Court to appoint the Court Commissioner qua a particular stage of the proceeding cannot be discerned. It cannot be laid down as an immutable rule of law that the Court commissioner cannot be appointed before the parties have started to adduce evidence. The provisions contained in Order XXVI Rule 9 of the Court indicate that the Court is empowered to appoint the court Commissioner to elucidate the matter in controversy. The term 'elucidation of the matter in controversy' cannot be equated to 'elucidation of the evidence adduced by the parties'. To lay down a cast iron rule that the Court commissioner cannot be appointed before the parties have adduced evidence would be, in effect, disabling the Court from getting assistance it requires for the determination of the controversy between the parties.”

8. In view of the legal position as clarified above, it has to be noted that the appointment of Court Commissioner for elucidation of the matter in controversy does not amount to collection of evidence. The trial Court has passed the impugned order directing appointment of the Court Commissioner by considering the pleadings of the parties and by arriving at a conclusion that the appointment of the Court Commissioner is necessary for bringing the factual position before the Court. The trial Court has exercised its discretion positively in allowing the application by recording reasons.

9. After giving anxious consideration to the contentions canvassed on behalf of the parties and in view of the position of law about the provisions of Order XXVI Rule 9 of the Code, I am of the opinion that the approach adopted by the trial Court is in tune with the legal position. I find that the trial Court has given due consideration to all the relevant aspects and the appointment of the Court Commissioner is directed on the basis of a reasoned order which does not show any perversity, warranting interference under Article 227 of the Constitution of India. The writ petition is therefore dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)