

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11112 OF 2019

KANCHANSINGH KARANSINGH PARMAR ... PETITIONER

VERSUS

NAGORAO HARI BHOSALE DESHMUKH
AND OTHERS ... RESPONDENTS

...
Mr. G. N. Chincholkar, Advocate for the Petitioner
Mr. A. S. Deshmukh, Advocate for Respondents
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 5th Joint Civil Judge, Junior Division, Nanded, below Exhibit-46 in Regular Civil Suit No.20/2016, thereby allowing the application filed by the respondents/defendants under Order 26 Rule 9 of the Civil Procedure Code (for short 'CPC') for appointment of Court Commissioner.

2. Having heard the learned Advocate for the petitioner, the learned Advocate for the respondents and on perusal of the documents placed on record, admittedly, the suit is filed by the petitioner/plaintiff for demarcation of suit property and for injunction. The petitioner claims that even before adducing

evidence, the application is filed and the same is allowed by the trial court.

3. It is not in dispute that, the relief of demarcation itself is claimed by the present petitioner/plaintiff. For demarcation of the suit property, measurement is necessary and the trial court therefore was justified in allowing the application by taking into consideration the settled legal position that when the dispute is regarding boundaries or encroachment, the same can be best adjudicated by taking assistance of the experts such as TILR etc. No prejudice is likely to be caused the petitioner if the measurement is carried out and boundaries are marked. The Commissioner's report would help the trial court to effectively adjudicate the dispute between the parties. The trial court has rightly relied on the ratio in **Habibkhan s/o Inauttalakhan Vs. Govind Rathod** reported in **2012 (1) All MR 803**.

4. No illegality or perversity is found in the order impugned in the present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. The writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]