

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

**WRIT PETITION NO. 5615 OF 2022**

Shamrao Tukaram Chopade thr L.Rs\_\_ Vs. \_\_ Mohd. Ismail Rasool Pathan thr L.Rs  
and ors

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Mr. R.K.Pillai, Advocate for petitioner

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 11/10/2022**

1] Heard Mr. Pillai, learned counsel for the petitioner.

2] It is contended that though earlier in point of time by the order dt 2.1.1998 (pg 67), a commissioner was appointed, who has measured the land and submitted his report at Exh.57, with the measurement map at Exh. 58, again the commissioner is being sought for the same purpose, which has been allowed by the impugned order dated 3.8.2022, without setting aside the earlier measurement, which, according to him, is impermissible.

3] It is not in dispute that the plaintiff/petitioner is the owner of land bearing Survey No. 254/1 and the respondent is the owner of land bearing Survey No. 254/4. The allegation in the suit is that the defendant has encroached upon the land of

Survey No. 254/1. The earlier measurement was only in respect of land of Survey No.254/1 and not a joint measurement of both the lands, considering which since now a joint measurement of both lands has been directed and which in fact has already been carried out in view of the statement made by Mr. Pillai, learned counsel for the petitioner, considering that a joint measurement is always necessary for determining the encroachment, I do not see any reason to interfere in the impugned order. The petition is dismissed. No costs.

**JUDGE**

*Rvjalit*