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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13702 OF 2024

Eknath Bhagwat Gadewar

.. Petitioner

versus

Kashinath Bhagwat Gadewar & others

.. Respondents

Mr. H. B. Nandagavale, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.

DATE : 24th JANUARY, 2025.

PER COURT :

1. This is a motion for speaking to the minutes of the order dated 16.12.2024.

2. Learned counsel for the Petitioner submits that in first line of paragraph No. 4 of the order words “the plaintiff” are typed instead of words “counsel” and in second line of the said paragraph word “petitioner” is mentioned instead of word “plaintiff”.

3. The errors being inadvertent, the same be corrected. Corrected order be uploaded.

(R. M. JOSHI)
Judge

dyb

(This order is modified and uploaded vide speaking to the minutes order dated 24.01.2025)

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

18 WRIT PETITION NO. 13702 OF 2024

EKNATH BHAGWAT GADEKAR
VERSUS
KASHINATH BHAGWAT GADEWAR AND OTHERS

...

Advocate for the Petitioner : Mr. H. B. Nandagavale

CORAM : R. M. JOSHI, J.

DATE : 16.12.2024.

PER COURT :

1. This Petition takes exception to order passed below exhibit 1 in RCS No. 17/2018 whereby application filed by respondent/plaintiff for appointment of Dy. Superintendent of Land Record as a Court Commissioner to measure the suit land came to be partly allowed.
2. Respondents/plaintiffs filed suit against the defendant/Petitioner by alleging that the defendant have caused encroachment to the extent of 35 R. land in gut No.62/2, 62/3. A relief of the removal of encroachment is sought. This contention is refuted by the defendant no. 3 by filing written statement at Exh. 23. The plaintiff examined himself and his cross-examination is over. At this stage, application Exhibit 14 came to be moved for measurement

of the suit land by appointing DSLR as Court Commissioner. Since the said prayer stood allowed, this Petition.

3. The learned counsel for the petitioner submits in view of the admission given for the plaintiff in his cross-examination to the effect that the boundary between two lands is Nala, nothing survives for measuring the land and as such, impugned order cannot sustain.

4. No doubt, there could be substance in the contention of **counsel** for the petitioner, that the admission of the **plaintiff** would bind him. However, at the same time for deciding issue of encroachment the measurement of the suit property is necessary for elucidating the matter in dispute. Having regard to the provisions of Order XXVI, Rule 9 of CPC and the stage at which the application is filed, it cannot be said that the same is by way of collection of evidence.

5. In the facts and circumstances of the case and more particularly, considering the nature of suit, which is for removal of encroachment, the exercise of discretion by Trial Court in appointment of Court Commissioner for measurement of suit land, cannot be called as perverse. This Court, therefore, does not find it to be a fit case for causing interference in the impugned order, in exercise of writ jurisdiction.

6. As a result of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)

shp