



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

WRIT PETITION NO.7381 OF 2023

(Pundalik Bhimrao Wankhade and another Vs. Sunanda Prabhakar Rao Mamankar
and another)

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

Court's or Judge's orders.

Mr. V. B. Bhise, Advocate for Petitioner.
Mr. Naval Shiralkar, Advocate i/b Mr. A. S. Dhage, Advocate for Respondent
No.2A to 2D.

CORAM: ANIL L. PANSARE, J.

DATE: 16th JULY, 2024.

1. Heard.
2. The petitioner is aggrieved by the order of rejection of application moved by the petitioner (original defendant) under Order 26, Rule 9 of the Code of Civil Procedure, 1908. The defendant intended to seek appointment of Court Commissioner to measure the property bearing Gat No.67.
3. The trial Court observed that the suit has been instituted by the respondent/plaintiff for removal of encroachment and for possession. The alleged encroachment is on Gat No.66. The trial Court noted that the petitioner is seeking to measure only Gat No.67, which will not serve the purpose. To my mind this finding is correct.
4. At this stage, the counsel for the petitioner submits that he is willing to seek measurement of Gat

bearing No.66 as well, to which the counsel for respondent has no objection.

5. In view thereof and even otherwise the suit being based on encroachment, it will be appropriate to appoint Court Commissioner to carry out measurement of the disputed Gat Nos.66 and 67 for effective adjudication of the dispute.

6. Hence, following order is passed:

i] The request made by the petitioner which is supported by the respondent to carry out measurement of Gat Nos.66 and 67 is allowed.

ii] The parties shall appear before the trial Court and seek appointment of Court Commissioner to measure the aforesaid property. The trial Court shall pass necessary order for appointment of Court Commissioner, considering the facts of the case.

7. The petition is disposed of in the above terms.

(ANIL L. PANSARE, J.)