



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

WRIT PETITION NO. 9478 OF 2025

**DHONDIRAM DASHRATH MAGRE DIED THR LRS PANDURANG
DHONDIRAM MAGRE AND ANOTHER
VERSUS
RAMESHWAR FAKIRCHAND TOTLA**

...
Mr. Awhad Rahul Rajeev And Mr. Kore Ganesh J., Advocate for the
Petitioner

Mr. Ajeet Kashliwal i/by Swapnil V. Lohiya, Advocate for respondent

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 06.08.2025

PER COURT :-

1. Heard learned Advocates appearing for respective parties.
2. The present writ petition takes exception to order dated 04.05.2024 passed by learned 2nd Joint Civil Judge Junior Division, Paithan, below Exhibit-115, in R.C.S. No.171 of 2004, by which learned Trial Court directed appointment of Court Commissioner for measurement of suit properties bearing gut No.755 and 756, situated at Bidkin Tq. Paithan.
3. The learned Advocate appearing for petitioner/defendant submits that respondent had previously filed application for appointment of Court Commissioner, which was rejected by Trial Court. The said order was confirmed by this Court. According to him, this is second application for appointment of Court Commissioner, which ought not to

have been entertained. He further submits that petitioner has already relied upon map prepared by TILR and seeks to prove the same by leading necessary evidence. In such circumstances, appointment of Court Commissioner was not necessary.

4. The learned Advocate appearing for respondent supports the impugned order.

5. Perusal of impugned order would show that learned Trial Court entertained second application for appointment of Court Commissioner on the ground that earlier application was rejected, as it was filed at premature stage. It is also matter of record that TILR, who had conducted measurement prior to institution of suit, is expired. The petitioner/defendant has disputed measurement report on record on technical grounds and alleges that same is prepared behind his back. The suit has now reached to final stage. The relief claimed in suit is regarding possession of encroached area as prescribed in plaint. Apparently, there is controversy as to boundaries of land owned by plaintiff and defendant. In such case, unless there is joint measurement demonstrating position of lands owned by respective parties and its demarcation, no effective orders can be passed in suit.

6. The provisions of Order XXVI Rule 9 of Code of Civil Procedure can be invoked in a situation where Court finds it necessary to get expert evidence to conclusively decide controversy between the parties.

In present case, when measurement map relied upon by plaintiff is not admitted by defendant, Trial Court is justified in exercise of jurisdiction under Order XXVI Rule 9 of Code of Civil Procedure and appointed Court Commissioner for local investigation of suit property of both parties. The directions issued by Trial Court are in tune with legal position as well as factual matrix on record.

7. In that view of the matter, no case is made out to cause interference under Article 227 of Constitution of India. Hence, writ petition stands **dismissed**.

[S. G. CHAPALGAONKAR, J.]

HRJadhav