



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

WRIT PETITION NO. 2587 OF 2024

Vitthal Namdeo Kharat And Another

VERSUS

Dublya Kailas Bhosale And Another

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Mr. D. P. Palodkar, Advocate for the Petitioners

Mr. R. R. Karpe, Advocate for Respondent nos.1 and 2

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CORAM : ROHIT W. JOSHI, J.

DATED : 23RD JUNE, 2025

PER COURT :-

. The present petition takes exception to order dated 24.01.2024, passed by the learned Civil Judge, Senior Division, Shrigonda, Dist. Ahmednagar, rejecting application for appointment of Commissioner for joint measurement of land of the petitioner and adjoining land of the defendant filed by the petitioner/original plaintiff vide Exhibit 35.

2. The present petitioners have filed a suit for perpetual injunction being Regular Civil Suit No.131 of 2021, *inter alia* praying that the defendants should not cause interference in their settled peaceful possession over the suit property.

3. The respondents, who are the defendants in the said suit have filed written statement, alleging that the plaintiffs

are deliberately trying to encroach over their land and that they have demolished the field boundaries, separating the two fields. It is stated in the written statement itself that measurement of the respective fields is essential. It is alleged that the plaintiffs are deliberately avoiding measurement of the respective lands.

4. The learned Trial Court has rejected the application holding that since, the suit is a suit for permanent injunction, it is for plaintiff to prove their ownership and possession over the suit property. The learned Trial Court has further observed that a Court Commissioner cannot be appointed to decide question of possession.

5. Having perused the averments in the plaint and the written statement, I am of the considered opinion that the dispute between the parties is not with respect to ownership or possession over the respective lands of the plaintiffs and defendants. The dispute is with respect to the exact location of common boundary of the respective lands. It is well settled by catena of judgments of this Court by joint measurement of adjoining lands is essential to decide a boundary dispute. It also needs to be stated that the defendants have specifically

stated in the written statement that joint measurement is necessary and plaintiffs are avoiding to carry out the same.

6. In view of the reasons mentioned above, the impugned order cannot stand scrutiny of law and is liable to be quashed. The impugned order dated 24.01.2024, passed by the learned Civil Judge, Senior Division on application at Exhibit 35 in Regular Civil Suit No.131 of 2021 is accordingly quashed and set aside. Application at Exhibit 35 filed by the plaintiffs in Regular Civil Suit No.131 of 2021 pending on the file of the learned Civil Judge, Senior Division, Shrigonda is allowed.

7. Writ Petition is **disposed** of accordingly with no orders as to costs.

(ROHIT W. JOSHI, J.)