



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

957 WRIT PETITION NO. 3280 OF 2024

1. Ramesh Raosaheb Kale
Age : 60, Occu : Agri,
Through Special Power of Attorney Holder
Petitioner No. 3
2. Shri Balasaheb Raosaheb Kale,
Age : 57, Occu: Agri,
Through Special Power of Attorney Holder
Petitioner no.3.
3. Shri. Raosaheb Maloji Kale,
Age : 70 Occu: Agri,
All R. : At post Ajnuj,
Tal: Shrigonda, Dist: Ahmednagar ...Petitioners

VERSUS

1. Shri. Balasaheb Hauserao Giramkar
Age: 58, Occu: Agri,
2. Smt. Bebitai Hauserao Giramkar
Age : 56, Occu : Agri
3. Shri, Raju @ Rajendra Hauserao Giramkar,
Age : 57, Occu : Agri,
4. Shri. Suresh Hauserao Giramkar,
Age : 60, Occu : Agri,
5. Ankita Rajendra Giramkar,
Age : 27, Occu : Education,
6. Gaurav Suresh Giramkar,
Age : 26 Occu Education,

Resp. Nos. 1 to 6 R/o : Post Ajnuj,
Tal: Shrigonda, Dist : Ahmednagar.

7. Shri. Arjun Abasaheb Giramkar,

Age : 67, Occu : Agri,

8. Shri. Sanjay Trimbak Giramkar,
Age: 50, Occu: Agri,
Resp. Nos. 7 and 8 R/o: Ajnuj,
Tal: Shrigonda, Dist: Ahmednagar ...Respondents

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Mr. Rahul A. Tambe, Advocate for the Petitioner

Mr. Rahul R. Karpe, Advocate for Respondent Nos.7 & 8.

Mr. Rohit Dhongde h/f. Mr Sanket S. Kulkarni and Mr.D. B. Rode,
Advocate for Respondent Nos.1 to 6.

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CORAM : ROHIT W. JOSHI, J.

DATE : 7th AUGUST, 2025

ORAL JUDGEMENT :

- The present petition is filed by the plaintiff in Regular Civil Suit No.234 of 2013 who is aggrieved by order dated 12.02.2024 passed by the learned 2nd Joint Civil Judge Junior Division on Application at Exhibit-63 thereby ordering appointment of Court Commissioner for measurement of lands of defendant nos.7 and 8 and for demarcating the boundaries of the land of the plaintiff and defendant nos.7 and 8. The plaintiff had filed suit for removal of encroachment and possession initially against defendant nos.1 to 6. In the said suit an application for appointment of Court Commissioner was filed, which was allowed and on measurement being carried out it was found that defendant nos.7 and 8 has also encroached upon certain portion of the suit property owned by the plaintiff. The plaintiff therefore moved an application for addition of defendant nos.7 and 8 as defendants to the said suit. The

said application was allowed by the learned Trial Court. After filing their written statement, defendant nos.7 and 8 had moved an application for appointment of Court Commissioner for measurement of land vide Exhibit-63 which is allowed vide impugned order dated 12.02.2024.

2. The learned Counsel for the petitioner states that after filing of the written statement by defendant nos. 7 and 8, issues were framed in the matter and the plaintiff has entered into the witness box. He states that the application at Exhibit-63 was filed at stage when the Examination in Chief of the plaintiff was recorded and the suit was pending for his cross-examination. The contention of the learned Advocate for the petitioner is that once a cadastral surveyor was appointed for measurement of the land and the said surveyor is not examined as a witness, there was no occasion for filing fresh application for appointment of Court Commissioner. The other objection by the learned Counsel for the petitioner is that measurement of land owned by defendant nos.7 and 8 will be not of any relevance since the dispute in the suit is not relating to boundaries of the lands owned by defendant nos.7 and 8.

3. As regards second contention raised by the learned Counsel for the petitioner it must be mentioned that although the learned Trial

Court has stated that the Court Commissioner shall carry out measurement of the land owned by defendant nos.7 and 8, a further direction is also issued for demarcation of the boundaries of the land owned by the petitioners/plaintiffs and defendant nos.7 and 8. Therefore, it will not be completely correct to state that the measurement is ordered with respect to a controversy which is not subject matter of the suit.

4. As regards the first contention that the application was premature in the sense that the evidence of plaintiff was on going and the Commissioner who had carried out the first measurement was not even examined when the application at Exhibit-63 was filed, the said objection can be taken care of by directing that the cadastral surveyor appointed may carry out the measurement, however, in the event any party chooses to examine the said surveyor as witness, the same will be done after the evidence of the first cadastral surveyor, in the event the plaintiff chooses to examine the surveyor appointed initially as a witness. It will also be pertinent to mention that the first measurement was carried out when defendant nos.7 and 8 were not parties to the suit.

5. In view of the observations made above, writ petition is **disposed of**. Order dated 12.02.2024 passed by the learned 2nd Joint Civil Judge, Senior Division, Shigonda on application at Exhibit 63 is maintained,

however as stated above, in the event cadastral surveyor appointed vide the said order is to be examined as witness, his examination will be recorded after the examination of first cadastral surveyor, if the plaintiff choses to examine the first cadastral surveyor as his witness.

[ROHIT W. JOSHI J.]