

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

933 WRIT PETITION NO. 4330 OF 2024

1. Rohidas s/o. Chandrakant Ubale,  
Age : 54 years, Occu : business & Agriculture,  
R/o.: Village Wagholi, Tq. Haveli, Dist. Pune ...Petitioner

**VERSUS**

1. Mahesh Fulchand Vagadekar  
Age : 33 yrs, Occu : Student,  
R/o.: Kapilapuri, Tq. Paranda,  
Dist. Dharashiv
2. Amarjit s/o Kulbhishan Savale,  
Age : 28 years, Occu : Student,  
R/o. Aawarapimpri, Tq. Paranda,  
Dist. Dharashiv
3. Surekha w/o Fulchand Vagadekar,  
Age : 53 yrs., Occu : Household,  
R/o : Kapilapuri, Tq. Paranda,  
Dist. Dharashiv ...Respondents

...  
Mr. Anil S. Bajaj , Advocate for the Petitioner.  
Mr. Abhijit S. More, Advocate for Respondent Nos.1 & 3.

...

**CORAM : ROHIT W. JOSHI, J.**  
**DATED : 22<sup>th</sup> JULY 2025**

**ORAL JUDGMENT :-**

1. The petitioner who is defendant no.3 in Regular Civil Suit No.866 of 2020 has challenged order dated 22.03.2024 passed by the learned Joint Civil Judge, Senior Division, Paranda below Exhibit-38 in the said suit thereby ordering appointment of Deputy Superintendent of Land Records as Court Commissioner for

measurement of land owned by the defendants (petitioner and respondent nos.2 and 3).

2. Mr. Bajaj learned Counsel for the petitioner contends that the prayer in the suit is for declaration of ownership and delivery of possession by removing encroachment by directing the Deputy Superintendent of Land Records to measure the land and fix the boundaries thereof. Mr. Bajaj criticizes the order passed by the learned Trial Court stating that this in terms amounts to passing a decree in as much as the prayer in the application below Exhibit-38 and the prayer in the suit is almost the same. He further contends that merely issues are framed in the matter and foundational facts are not yet proved by the plaintiff by entering the witness box in order to make out a case for appointment of Court Commissioner.

3. As regards the first contention that the relief in the application at Exhibit 38 and the relief in the suit is the same, the said contention is liable to be rejected. Meaningfully read prayer clause-1 in the plaint indicates that the plaintiff is seeking a decree for possession by removal of encroachment and has further prayed that assistance of Deputy Superintendent of Land Record should be taken for the same. The application at Exhibit-38 was filed only for the purpose of determination of the exact area of encroachment which is different than the prayer made in the plaint.

4. The learned Counsel for the petitioner places reliance on the judgment dated 15.11.2019 passed by this Court in Writ Petition No.5152 of 2009 to contend that appointment of Commissioner for measurement of lands in case of boundary dispute can be done only after the oral evidence of both sides is concluded.

5. Per contra, the learned Counsel for the plaintiff places reliance on judgment dated 30.04.2025 passed by this Court in Writ Petition No.5158 of 2024 to contend that even at the initial stage a Court Commissioner can be appointed to resolve a boundary dispute.

6. Having considered the judgments relied upon by the respective parties, in the considered opinion of this Court perusal of respective pleadings will demonstrate that ownership of respective lands owned by plaintiff and defendants is not in dispute. However, it is the case of the plaintiff that he has carried out private measurement of the land and the plaintiff is therefore entered in the witness box. In such circumstances in the considered opinion of this Court ends of justice will be subserved by granting liberty to the plaintiff to file fresh application for appointment of Court Commissioner after the evidence of the plaintiff is recorded.

7. Rival contentions are kept open. It is clarified that this Court has not expressed any opinion as regards the merits of the matter.

8. Petition is partly allowed. Order dated 22.03.2024 passed by the learned Joint Civil Judge, Senior Division, Paranda below Exhibit-38, is quashed and set aside with liberty to the plaintiff (respondent no.1) to file appropriate application for appointment of Court Commissioner for measurement of land owned by the plaintiff and defendants after the evidence of plaintiff is recorded.

**[ROHIT W. JOSHI, J.]**