



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

WRIT PETITION NO. 7163 OF 2025

GOVIND BABURAO NADRE
VERSUS
SUNIL SHIVPRASADJI KABRA

...
Mr. Girish K. Thigle Naik, Advocate for the Petitioner.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th JUNE, 2025.

P.C.:-

1. The petitioner impugns order dated 15.04.2025 passed by learned Civil Judge Junior Division, Basmathnagar, Dist. Hingoli below Exhibit-30 in Regular Civil Suit No.381/2023, by which application filed by respondent/plaintiff for appointment of Court Commissioner is allowed and T.I.L.R. is directed to carry measurement after giving prior notice to plaintiff and defendant and file report of such measurement within a period of one month from the date of receipt of charges.

2. The petitioner/defendant raises challenge to impugned order firstly on the ground that application is not tendered at appropriate stage, as parties are yet to lead evidence. Secondly, suit is filed seeking decree of declaration and possession. The defendant has challenged title of plaintiff and unless finding is recorded on the point of ownership, consequential order cannot be passed. As such, application for appointment of Court

Commissioner could not have been entertained. In support of his contentions, Mr. Thigle, learned Advocate appearing for petitioner placed his reliance on following judgments:

1. ***Bajrang Dattatray Charwad Vs. Deubai Rajaram Rokade and Others*¹.**
2. ***Dinanath Supdu Joshi, through hi Legal Heirs Sharda Vs. Shriram and Another*².**
3. ***Dnyaneshwar Shivaji Bodke Vs. Mangaldas Govinda Bodke and Others*³.**
4. ***Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr. (Writ Petition No.5158/2024 dated 30.04.2025).***
5. ***Sundarjas Kanyalal Bhatija and Others Vs. Collector, Thane, Maharashtra and Other*⁴.**

3. Considering submissions advanced and contentions of rival parties, it can be observed that suit is instituted primarily for relief of declaration of ownership and removal of encroachment alleged to have been made by defendant over property of plaintiff. The contentions in the plaint clearly discloses that plaintiff is asserting his ownership over suit property and further specifically pleaded that defendant has encroached upon his portion on or about 20.09.2023. The petitioner/defendant failed to file written statement. Therefore No Written Statement order is passed. The denial to the title of plaintiff is made in say to the application filed below Exhibit-5 and there is no substantive pleading on the part of

¹ 2025 SCC OnLine Bom 830.

² 2022 SCC OnLine Bom 6712.

³ 2025 SCC OnLine Bom 1195.

⁴ (1989) 3 SCC 396.

defendant. In this background, learned Trial Court considered conspectus of the matter and found that looking to the nature of dispute, report of Court Commissioner would be necessary to resolve controversy between parties. The Trial Court exercised its discretion under Order XXVI Rule 9 of Code of Civil Procedure.

4. This Court upon perusal of reasoning adopted do not find any substance in petitioner's contentions or reason for interference in order passed by Trial Court in exercise of Writ jurisdiction of this Court under Article 227 of the Constitution of India. So far as case laws relied upon by Mr. Thigle, there cannot be dispute over preposition of law. However, even applying preposition set out therein, no fault can be found in impugned order.

5. In result, Writ Petition sans merit. Hence, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE