



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

**31 WRIT PETITION NO. 8958 OF 2023**

**SANJEEVANI VASANT LOHAKARE AND ANOTHER  
VERSUS  
NAVNATH TRIMBAK LATPATE AND ANOTHER**

...  
Advocate for the Petitioners : Mr. Deshmukh Himmatsinh D.  
AGP for Respondent No. 1 : Mr. Tushar Shinde

...

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATE : 28.07.2025**

**PER COURT :**

Heard both the sides.

2. The petitioners impugn the order dated 03.03.2023, passed by the learned Civil Judge Senior Division Newasa, below Exh. 24 in Regular Civil Suit No. 21/2019, whereby the application filed by her for appointment of Court Commissioner has been rejected. The respondent-plaintiff instituted a suit seeking fixation of the boundaries by directing measurement through Deputy Superintendent of Land Records Newasa in respect of land bearing Gat No. 19 to the extent of 41-Are within the ownership of the plaintiff. The plaintiff has further prayed to remove the encroachment made by respondent on portion of his land and grant perpetual injunction.

3. The petitioners-defendant filed an application below Exh. 24 seeking appointment of Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure contending that the plaintiff was never in possession of the suit property and there was no boundary between them. As such there is no reason for destruction of the boundaries, it is contended that to find out the situation of the boundaries and actual position on the spot, the appointment

of the court commissioner would be necessary. The trial court rejected the application observing that there is no dispute regarding identity of boundaries and the dispute is limited as to possession of the plaintiff over the suit property.

4. The learned advocate appearing for the petitioners submits that from the very nature of the prayer in the suit, it can be observed that there is a dispute as to the boundaries between the parties and unless the measurement is carried out by the competent authority, the controversy involved in the suit cannot be resolved. The learned advocate appearing for the respondent, however, supports the impugned order.

5. Having considered the submissions advanced as observed in earlier paragraphs, the suit itself is instituted for fixation of boundaries and removal of encroachment. In this background, the observation of the trial court that there is no dispute as to the boundaries and suit is only in respect of identification of the property of the plaintiff appears to be erroneous. The dispute between the parties is merely as regards to the boundaries of the respective lands in their possession. In this background, to resolve the controversy between the parties, the measurement of the respective lands owned by plaintiff and defendant and find out the encroachment if any after fixing the boundaries would be necessary. Therefore, the measurement needs to be carried out by competent government official from the office of TILR or DILR in presence of the parties and on the basis of such report of measurement further orders needs to be passed in the suit.

6. In that view of the matter the impugned order cannot be sustained in law. In result, the writ petition is allowed in terms of prayer clause 'A'. The application (Exh. 24) stands allowed. The D.I.L.R./T.I.L.R. is appointed as a Court Commissioner, who shall measure the respective Gat numbers and prepare a map of the land within ownership of plaintiff and defendant and also depict the encroachment if any. The defendants shall deposit the

charges for urgent measurement. The court commissioner shall complete the work of the measurement within a period of eight weeks after giving notices to the parties.

7. The writ petition stands disposed of in above terms.

( S. G. CHAPALGAONKAR, J.)

mkd/-