



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8796 OF 2024

Ashok Mahalingappa
Alias Mahadevappa Sangvikar
....Petitioner

VERSUS

Govind Bapurao Shelke & others
.....Respondents

.....

Mr. J. R. Narwade, Advocate holding for Mr. V. D. Salunke, Advocate
for the Petitioner.

Mr. J. R. Patil, Advocate for Respondent Nos. 1 to 4.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2025.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 33 in Regular Civil Suit No. 518/2019 whereby the Application filed by Plaintiff for appointment of Court Commissioner for measurement of suit land came to be rejected.

2. The record indicates that the Plaintiff filed suit seeking perpetual injunction and declaration of ownership in respect of land bearing Survey no. 129/2/1 admeasuring 36 R situated at village Ahmedpur, Tq. Ahmedpur, Dist. Latur. The Defendants are neighbouring land owners. It is the case of the Plaintiff that the

Defendants are trying to create new road towards western side illegally and unauthorisedly. Plaintiff's request for not creating such road was not paid heed by the Defendants. Hence, suit came to be filed seeking permanent injunction.

3. Defendants resisted the suit. Following issues were framed by the Trial Court :-

1. Whether the plaintiff proves that, he is owner of the suit property ?
2. Whether the plaintiff proves that, he is entitled for relief of declaration of ownership as claimed ?
3. Whether the plaintiff proves that, he is in possession of suit property ?
4. Whether the plaintiff proves that, defendants have caused obstruction to his peaceful possession over the suit property ?
5. Whether, the plaintiff proves that he is entitled to relief of perpetual injunction as claimed ?
6. Whether the suit is within limitation ?
7. What order and decree ?

4. Plaintiff stepped into witness box and while his cross-examination was not complete, an Application Exhibit 33 came to be filed for appointment of Court Commissioner. This Application came

to be rejected by the Trial court on the ground that the issue involved in this suit is with regard to perpetual injunction and declaration of ownership of Plaintiff over the suit land. It is specifically observed that there is no issue with regard to the encroachment or boundary dispute between the parties. In this ground, so also on the ground that appointment of Court Commissioner for collecting evidence is impermissible, the Application came to be rejected.

5. Learned counsel for Petitioner/Plaintiff submits that in view of the pleadings in the plaint, wherein there is specific allegation made against the Defendants to cause obstruction to the boundaries, this becomes a dispute of boundary. It is her further submission that having regard to the fact that the Petitioner/Plaintiff has got his land measured on two occasions, the appointment of Court Commissioner at appropriate stage of the suit be allowed.

6. Learned counsel for Respondents/Defendants opposed the said contention by pointing out the fact that the suit does not involve the issue with regard to fixation of the boundaries or removal of encroachment.

7. There cannot be any dispute about the fact that in case there is dispute with regard to the boundaries or encroachment of the suit property, appointment of Court Commissioner can be permitted at appropriate stage of the proceeding and for elucidating the matter in issue. Here in this case however, from perusal of the pleadings so also issues framed by the Trial Court, there does not appear any issue involved in respect of dispute over measurement of the property or boundaries nor any encroachment is to be decided by the Trial Court.

8. Perusal of the order impugned indicates that in Paragraph No. 17 of the said order, the Trial Court has rightly taken into consideration this aspect and concluded that this is not a case wherein appointment of Court Commissioner for measurement of the suit land is necessary.

9. In the facts of the case, there appears no perversity in the order passed by the Trial Court. Petition stands dismissed.

(R. M. JOSHI)
Judge