



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8911 OF 2024

1. Balu S/o. Vitthalrao Jondhale,
Age : 55 years, Occ. : Agri.,
R/o. Dr. Ambedkar Nagar, Purna,
Tq. Purna, Dist. Parbhani.

... PETITIONER
(Orig. defendant no. 2)

VERSUS

1. Ramesh Shankarrao Suryawanshi,
Age : 52 years, Occ. : Agri.,
R/o. Nila, Tq. Purna, Dist. Parbhani.
2. Pramod Ratanlal Mutha,
Age : 52 years, Occ. : Agri.,
R/o. Purna, Tq. Purna, Dist. Parbhani.
3. Sanjay Changanlal Lohiya,
Age : 60 years, Occ. : Agri. & Business,
R/o. Near Abhinav School, Purna,
Tq. Purna, Dist. Parbhani.
4. Baburao Laxman Suke,
Age : 62 years, Occ. : Agri.,
R/o. Koliwada, Purna, Tq. Purna,
Dist. Parbhani.
5. Suresh Namdev Gaikwad,
Age : 52 years, Occ. : Agri.,
R/o. Ambedkar Nagar, Purna,
Tq. Purna, Dist. Parbhani.
6. Laxman Sitaram Manjare,
Age : 55 years, Occ. : Agri.,
R/o. Vadarwadi, Behind the Tahsil Officer,
Purna, Tq. Purna, Dist. Parbhani.

(Ori. Plaintiff)

... RESPONDENTS
(Orig. defendants)

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- Mr. Barhate Patil Avinash N., Advocate for the Petitioner
 - Mr. M. P. Kale, Advocate for Respondent No. 1
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CORAM : ROHIT W. JOSHI, J.
DATE : AUGUST 06, 2025

ORAL JUDGMENT:

1. The present petitioner is defendant no. 2 in Regular Civil Suit No. 192 of 2022 filed by the present respondent no. 1 seeking decree of declaration and perpetual injunction. The suit property is an agricultural land. It is the case of plaintiff that the plaintiff and defendants are owners of adjoining land and the defendants are trying to encroach over the property of the plaintiff. Thus, going by the plaintiff's averments there is a boundary dispute between the parties. The defendants have not filed written statement in the matter. Order to proceed without written statement is passed against the present petitioner/defendant no. 2 on 18.04.2023. Thereafter, on 16.06.2023 respondent no. 1/plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner for joint measurement of plaintiff's and defendants' properties. The said application filed at 'Exhibit 21' came to be allowed vide order dated 12.03.2024. The present petition is filed challenging the said order. The contention of the plaintiff is that before evidence is led and foundational facts are established, the learned Trial Court could not have passed and the impugned order appointing Court Commissioner. He has placed reliance on judgment of this Court at Aurangabad Bench in Writ Petition No. 11997 of 2023, in support of his contention.

2. Per contra, the learned advocate for respondent no. 1/plaintiff relies on judgment dated 30.04.2025 passed at Principal Seat in Civil Appellate Jurisdiction in Writ Petition No. 5158 of 2024, wherein it is held that if pleadings of parties establish that there is a boundary dispute, then appointment of Court Commissioner can be made before the party applying for such appointment leads evidence in the matter.

3. In the present case, admittedly, the petitioner/defendant no. 2 has not filed written statement. Perusal of the plaint averments will demonstrate that there is a boundary dispute. These plaint averments are not denied by filing written statement. It is well settled by a catena of decisions that boundary disputes cannot be settled without joint measurements of dispute lands.

4. In that view of the matter, I find no reason to interfere with the impugned order passed by the learned Trial Court appointing Court Commissioner for measurement of properties owned by the respective parties, which are adjoining each other. The writ petition is therefore, **dismissed** with no order as to costs.

5. At this stage the learned counsel for the petitioner makes a request for extension of interim order dated 21.08.224. The learned counsel for respondent no. 1/plaintiff opposes the prayer stating that the

interim order stands vacated, since the petitioner did not take steps for effecting service on the respondents. Be that as it may, the petitioner has not filed written statement in the civil suit. Having regard to the same, the request for extension of interim order is **rejected**.

[ROHIT W. JOSHI, J.]