

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9939 OF 2023

Abdul Samad Ibrahim Shaikh

VERSUS

Imrankhan Ferojkhan Pathan

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Advocate for the Petitioner : Mr. Ashtekar Raviprasad K.

Advocate for Respondent : Mr. Tukaram M. Venjane

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 18, 2025

PER COURT :

1. Heard learned counsel for respective parties.
2. By way of present petition, the petitioner assails the order dated 19.06.2023 passed below Exhibit-19 by the learned Joint Civil Judge Senior Division, Nilanga in R.C.S. No.1571/2022, whereby the application filed by respondent came to be allowed and the learned Trial Court while allowing the application directed to appoint Dy. Superintendent of Land Records, Nilanga as Court Commissioner and directed to carry out measurement of entire land bearing Survey No.55/67/1 situated at Village Jau, Tq. Nilanga, District Latur and also directed to fix the boundaries of the lands belonging to plaintiff and defendant, if any.
3. The petitioner also assails the order dated 10.07.2023 passed below Exhibit-23 by the learned Joint Civil Judge Senior Division, Nilanga, whereby the application filed by the

petitioner/plaintiff for review of order dated 19.06.2023 passed below Exhibit-19 came to be rejected.

4. After going through the record which is placed along with the petition, the respondent filed the suit for simplicitor injunction. The defendant in the said suit filed an application under Order 26 Rule 9 of Civil Procedure Code for appointment of Court Commissioner of the land belonging to the plaintiff and defendant. In fact, the application itself ought not to have been entertained by the learned Trial Court for the simple reason that no issues are framed at the initial stage and even the parties had not led the evidence upto now. Therefore, at such a belated stage, the Trial Court ought not to have entertained the application filed by the defendant for seeking appointment of Court Commissioner.

6. In view thereof, I am inclined to allow the petition by setting aside both orders dated 19.06.2023 and 10.07.2023 passed by the learned Joint Civil Judge Senior Division, Nilanga.

7. Therefore, The petition is allowed. The order dated 19.06.2023 passed below Exhibit-19 and order dated 10.07.2023 passed below Exhibit-23 by the learned Joint Civil Judge Senior Division, Nilanga in R.C.S. No.1571/2022 are quashed and set aside.

8. The parties are at liberty to file application, if occasion arises after leading the evidence.

(SIDDHESHWAR S. THOMBRE, J.)