



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 9351 OF 2024

Rahim Pasha Haji Pasha

....Petitioner

VERSUS

Abdul Majid Abdul Rahman & others

.....Respondents

Mr. H. I. Pathan, Advocate for the Petitioner.

Mr. M. P. Kale, Advocate for Respondent Nos. 1 to 3.

**CORAM : R. M. JOSHI, J.**

DATE : 11<sup>th</sup> SEPTEMBER, 2025.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 51 in Regular Civil Suit No. 560/2019 whereby the Application filed by the Petitioner/Plaintiff for appointment of Court Commissioner for joint measurement of the land Survey Nos. 8 and 2 situated at Majalgaon, Dist. Beed, came to be rejected.

2. There is no dispute about the fact that the suit is filed by Plaintiff for declaration and injunction in respect of the suit property against the Defendants. Defendants filed written statement and denied the contentions of Plaintiff with allegation with regard to the sale-deed not being in respect of the suit property but in respect of some other property. In the light of these facts, an Application came

to be moved for appointment of Court Commissioner for joint measurement of the lands in question. This Application is rejected by the Trial Court essentially on the ground that the Application has been filed to collect evidence which is not permissible in law. Similarly, it is held that the suit is not for possession of the suit property but only for declaration and injunction.

3. Learned counsel for Petitioner has drawn attention of the Court to the written statement filed by Defendants raising dispute with regard to the status of the land. Thus, it is his submission by relying upon judgments in case of Kolhapur Bandu Lakade vs. Yallappa Chinappa Lakade and others, **2011(3) All.M.R. 599** and Malhar Ganpat Bokephod and others vs. Shivaji Vishwanath Pawal, **2014(3) All.M.R. 698** that the appointment of Court Commissioner here in this case would be essential.

4. There is no dispute about the fact that the suit is filed by the Plaintiff seeking declaration in respect of the suit property on the basis of registered sale-deed. Similarly, this is not a suit for removal of encroachment or possession of the suit property. The issues framed by the Trial Court do not indicate so. In light of these facts,

the question arises as to whether it would be appropriate for appointment of the Court Commissioner.

5. There cannot be any dispute with regard to the preposition sought to be canvassed by learned counsel for Petitioner relying upon the aforestated judgments wherein it is held that in case of a dispute about demarcation of land, as well as in case of a boundary dispute and removal of encroachment, appointment of Court Commissioner to measure the subject properties is necessary. However, here in this case, no such issue is involved and as such the Trial Court would not be required to go into the allegations made in the written statement, if any. Suffice it to say that in the instant case the issue of boundary, encroachment or demarcation of lands is not involved. Hence, this Court finds no perversity in the rejection of application. In the result, Petition stands dismissed.

( R. M. JOSHI)  
Judge

dyb