



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

WRIT PETITION NO.11621 OF 2023

Bapusaheb Gopinath Mhaske,
Age: 61 years, Occu. Agril.,
R/o. Warur (Bd.), Tq. Shevgaon,
Dist. Ahmednagar.

...Petitioner.
(Defendant no. 5)

Versus

1. Ramnarayan Bansidhar Lahoti,
Age: 64 years, Occu. Agril. & Business,
R/o: Main Road, Shevgaon, Tq. Shevgaon
Dist. Ahmednagar.

2. Bhaskar Damodar Revadkar
Age: 64 Years, Occu: Agriculture,
3. Balasaheb Damodar Revadkar
Age: 54 Years, Occu: Agriculture,

] Respondent Nos.
] 2 & 3 deleted as
] per order
] dtd.30.1.2024
]

4. Arjun Damodar Revadkar,
Age: 67 Years, Occu: Agriculture,

5. Rajendra Gopinath Mhaske
Age: 55 Years, Occu: Agriculture,

(Respondents no.2 to 5
all R/o: Village Varur (Bk),
Tq. Shevgaon, Dist: Ahmednagar)

..Respondents
(Respondent no. 1 -
Orig. Plaintiff)

.....

Shri. A. A. Joshi, Advocate h/f. Shri. S. V. Natu,
Advocate for the Petitioner
Shri. Y. V. Kakade, Advocate for the Respondent No.1
Respondent Nos.2 & 3 – Deleted.
Respondent Nos.4 & 5 - Served.

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CORAM : NEERAJ P DHOTE, J.
RESERVED ON : NOVEMBER 25, 2025
PRONOUNCED ON : DECEMBER 11, 2025

FINAL ORDER :-

. Impugned in this Writ Petition under Article 227 of the Constitution of India is the order dated 03.08.2023 passed by the learned Joint Civil Judge, Junior Division, Shevgaon, below Exh.21 in Regular Civil Suit (for short, 'R.C.S.') No.218/2020 allowing the Application of the Plaintiff to appoint the Court Commissioner.

2. Heard the learned Advocate for the Petitioner and the learned Advocate for the Respondent No.1. Perused the papers on record.

3. The Petitioner is the Orig. Defendant No.5 in aforesaid RCS filed by the Respondent No.1 - Plaintiff under the provisions of Sections 37 and 38 of the Specific Relief Act for perpetual injunction. According to the Respondent No.1, the suit land specifically mentioned in the plaint situated at village Warur (Bd)., Tal. Shevgaon, Dist. Ahmednagar was owned and possessed by him. There was riverbed towards east of the suit property which was in south-north direction. Adjacent to the riverbed towards east there was land of the Petitioner and Respondent Nos.2 to 5 (Orig. Defendants). As the Respondent No.1 was cultivating his land in peaceful and smooth manner, the Petitioner and Respondent Nos.2 to 5 were trying to disturb his peaceful possession on the suit

property. The Petitioner and Respondent Nos.2 to 5 had illegally carried out filling in the riverbed, which resulted in the flow of river water into the land of Respondent No.1. The Petitioner and Respondent Nos.2 to 5 were cultivating the encroached land from the riverbed. It caused obstruction on the peaceful cultivation of the suit land by Respondent No.1. Therefore, the aforesaid RCS came to be instituted by the Respondent No.1 against the Petitioner and Respondent Nos.2 to 5.

4. The Respondent No.1, in the above referred RCS, filed the Application below Exh.21 for appointment of Court Commissioner for bringing on record the factual aspects in respect of the encroachment and to ascertain the extent of riverbed near the suit land and land of the Petitioner and Respondent Nos.2 to 5.

5. The said Application was opposed by the Petitioner by filing Reply below Exh.24. He denied the contentions made in the Application. He also contended that the issues were not yet framed and the Application for appointment of Court Commissioner was premature and prayed for rejection of the Application.

6. The learned Trial Court, by the impugned Order, allowed the Application and appointed the Taluka Inspector of Land Records (for short, 'T.I.L.R.') as Court Commissioner. In the said order, the T.I.L.R. was directed to undertake measurement of the suit land and the lands of

the Petitioner and Respondent Nos.2 to 5, ascertain boundaries, prepare a map showing the boundaries and any encroachment and submit a Report within the stipulated time.

7. It is submitted by the learned Advocate for the Petitioner that, issues were not yet framed and the Court Commissioner cannot be appointed to collect the evidence. The learned Trial Court have erroneously allowed the Application. In support of his contention, he relied on the Judgments in (a) *Dhondiram Nivrutti Pawar (since deceased) through L.Rs Dhanaji Dhondiram Pawar and Others vs. Laxman Khashaba Pawar and Others*, [2018 (2) Mh. L. J.] 255, (b) *Subhash Bapurao Waghmare vs. Sitaram Tukaram Date*, 2024 SCC OnLine Bom 4654.

8. It is submitted by the learned Advocate for the contesting Respondent No.1 that, considering the nature of matter, it was necessary to bring on record the factual scenario before the learned Trial Court which would help the learned Trial Court to decide the suit. No illegality was committed by the learned Trial Court by allowing the Application. He cited the Judgments in (i) *Haryana Waqf Board vs. Shanti Sarup and Others*, (2008) 8 SCC 671, (ii) *Girish Vasantrao Bhoyar and Another vs. Nimbaji Warluji Bambal*, [2009 (4) Mh.L.J.] 371, (iii) *Bhupendra s/o. Bhagwat Turkar vs. Homraj s/o. Zituji Meshram*, [2014(4) Mh.L.J.] 231, (d) *Shantaram Dattatray Kekan and Others vs.*

Bhausahab Karbhari Kekan and Others, 2022 DGLS (Bom.) 5081.

9. The appointment of the Court Commissioner is governed by the provisions of Order-XXVI, Rule-9 of the Code of Civil Procedure (for short, 'C.P.C.'), which reads as follows:

“9. Commissions to make local investigations.- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

10. The above referred Judgments cited by both the sides lay down the settled legal position that, the Court Commissioner cannot be appointed for the purpose of collection of evidence and the Court Commissioner can be appointed at any stage. Those judgments were delivered in the peculiar facts of those cases.

11. Here the suit was for Perpetual Injunction with specific contention of encroachment in the riverbed by filling the riverbed and cultivating the encroached portion of the riverbed. It is further case of Respondent No.1 that, due to the encroachment in the riverbed which was adjacent to the suit land, he was facing difficulty in cultivating the suit land as the water from the river flows into the suit land as the natural course of

river got changed. It is observed by the learned Trial Court in the impugned order that, for proper adjudication of the matter on merits and taking into consideration the interest of both the sides, it was necessary to appoint Court Commissioner and passed the order. When the case of the Respondent No.1 is specific in respect of encroachment and resulting in the change of natural course of the river affecting his smooth and peaceful cultivation of the suit land, it cannot be said that, the learned Trial Court has committed any error by passing the impugned order. As is clear from the above referred Judgments, there is no embargo on appointment of the Court Commissioner prior to commencement of the Trial. The learned Trial Court appointed T.I.L.R. as the Court Commissioner to carry out the measurements of the suit land and the land of the Petitioner and Respondent Nos.2 to 5, demarcate the same, and submit a Report in respect of the encroachment with map. Considering the nature of dispute, the said exercise by the learned Trial Court would certainly help the Court to decide the matter in just manner. The learned Trial Court in clear terms observed that, for proper decision in the *lis* and to reduce the complications in the matter and considering the interest of both the sides, it felt necessary to appoint the Court Commissioner. In this view of the matter, no interference is warranted in the impugned order and hence, the following order.

ORDER

(I) The Writ Petition stands dismissed.

(NEERAJ P. DHOTE, J.)

GGP