



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

925 WRIT PETITION NO. 13421 OF 2023

**PIRAJI HULAPPA SHRIRAME AND ANOTHER
VERSUS
REVATI ANANT SURYAWANSHI**

Mr. H. V. Patil, Advocate for the Petitioner
Mr. R. M. Bhagwat h/f Mr. G. P. Shinde, Advocate for the
Respondent

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 11th DECEMBER, 2025

P. C. :-

1. Heard Mr. Patil, learned counsel for the respective parties.
2. The petitioners are challenging the order dated 30.09.2023 passed below Exhibit 79 by learned Civil Judge Senior Division, Bhokar, District Nanded in R.C.S. No.15 of 2016, whereby the application filed by respondent came to be allowed.
3. Mr. Patil, learned counsel for the petitioners submits that the order dated 30.09.2023 passed by the Civil Judge, Senior Division, Bhokar in R.C.S. No. 15/2016 is contrary to the order

dated 21.04.2023 passed by this Court. This Court in the earlier Writ Petition No. 10126/2019 had directed the parties to file an application after recording of the evidence. He further submits that the application filed by the plaintiff was only for seeking measurement of the plaintiff's land and therefore, on this ground, it is contended that the learned Trial Court committed an apparent error while considering the application. He further submits that allowing the appointment of Court Commissioner would amount to collection of the evidence, which according to the settled law, the same is not permissible.

4. Per contra learned counsel for the Respondent submits that this Court specifically ordered in Writ Petition No. 10126/2019 that the appropriate application can be filed after the parties commences the evidence, therefore, he further submits that the learned Trial Court has passed order rightly.

5. Having considered the rival submissions of both the parties, this Court, by order dated 21.04.2023 has observed in paragraph No.6 which reads thus:

"6. The parties are at liberty to move such application for appointment of Court Commissioner,

after recording of evidence commences in the Trial Court. If such application is filed, the Trial Court shall consider the same on its own merits, without being influenced by the order impugned in the present petition."

6. There is no dispute about the fact that both the counsel admitted the plaintiff's evidence is already over and the defendant's evidence is going on. Two witnesses are examined on behalf of the defendants. As this Court has already ordered that the parties are at liberty to file application after recording of evidence commences in the Trial Court, I do not find any perversity in the impugned order.

7. As far as application is concerned, learned Trial Court while passing the order, directed in paragraph No.4 of the operative order which reads thus:

"04. The Court Commissioner to measure the suit property i.e. plaintiff's (and of defendant's) agricultural land, in Survey No. 10/1 to the extent of 01 H. 21 R in the name of plaintiff, at Nanda, Tq. Bhokar, District Nanded, as per rules, as shown in the possession of the plaintiff, and similarly the land of all the occupants, of the survey No. 10/1, who are the adjacent owner of the plaintiff as shown in the 7/12 extract."

8. I am of the view that the learned Trial Court has not

committed error while passing the order. Therefore, I do not find any reason to interfere with the order dated 30.09.2023 passed below Exhibit 79 by learned Civil Judge Senior Division, Bhokar, District Nanded in R.C.S. No.15 of 2016.

9. In view thereof, petition stands dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)

ssp