



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

**WRIT PETITION NO. 2430 OF 2025**

TANAJI SHANKARRAO BHOSALE AND ANOTHER  
VERSUS  
SHIVAJIRAO NARSINGRAO BHOSALE AND OTHERS

...  
Mr. Rahul Rajiv Deshmukh, Advocate for the Petitioners.  
Mr. Pratap P. Mandlik, Advocate for Respondent No.1.  
...

**CORAM : S. G. CHAPALGAONKAR, J.  
DATED : 24<sup>th</sup> JUNE, 2025.**

**P.C.:-**

1. The order dated 01.01.2025 passed by learned Civil Judge Junior Division, Ausa in Regular Civil Suit No.320/2021 below Exhibit-62, thereby directing appointment of TILR as Court Commissioner to measure land bearing gut No.176/a to the extent of 1H 82R with further direction to furnish measurement map has been assailed in this Writ Petition.

2. Mr. Deshmukh, learned Advocate appearing for petitioners objects impugned order firstly on the ground that it is passed at premature stage, when suit is at the stage of framing issue. Secondly, according to him, measurement of entire gut ought to have been directed and not a particular area. He further submits that appointment of Court Commissioner in present case is nothing but an attempt to collect evidence. Mr. Deshmukh relies upon

judgment of this Court in case of *Dnyandeo Vithal Salke and Others Vs. Dagdu Kadar Inamdar*<sup>1</sup>.

3. Perusal of prayers in the suit shows that plaintiff wants fixation of boundaries of his part of land from Gut No.176/a to the extent of 1H 82R situated on Western side of survey number. The petitioner/respondent filed his written statement, which shows that there is no dispute as to the ownership of plaintiffs over suit property. On other hand, it is discernible that defendants are raising dispute as to the boundaries. It is, therefore, clear that dispute between parties is as to fixation of boundaries. Therefore, in such case, Court is empowered to exercise powers under Order XXVI Rule 9 of Code of Civil Procedure.

4. The second contentions raised on behalf of respondents is that application is entertained at premature stage, however, looking to the provision contained under Order XXVI Rule 9 of Code of Civil Procedure, it is discernible that Court is empowered to appoint Commissioner for the purpose of elucidation of matter in controversy. No specific stage for appointment of Court Commissioner has been specified. In present case, if there is dispute as to boundaries as can be ascertained from pleadings, Trial Court can definitely exercise jurisdiction and pass such order even at stage when evidence recording is not commenced after

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<sup>1</sup> 2017 (3) Mh.L.J. 314.

framing issues. Reference can be given to judgments of this Court in case of ***Pandit Vitthal Landge Vs. Vishnu Govind Pawar and Anr. (Writ Petition No.5158/2024 dated 30.04.2025)*** and ***Shantaram Dattatraya Kekan and Ors. Vs. Bhausahab Karbhari Kekan and Ors.***<sup>2</sup>, wherein in paragraph no.6 Court observed as under:

*“6. This Court has carefully gone through the observations made by this Court. The points involved in those matters and facts of the present matter are altogether different. The provision of Order 26 Rule 9 of Civil Procedure Code shows that, there is no prohibition to appoint Court Commissioner at such stage. This is enabling provision and no stage is fixed in the provision. Further facts of the present matter show that the dispute can be resolved effectively after taking the measurement through Government Surveyor, if such measurement is possible.”*

5. In that view of the matter, there is no merit in Writ Petition.

Hence, Writ Petition stands dismissed.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

Devendra/June-2025