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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10405 OF 2023

Ananda Bala Nale

... Petitioner

V/s.

Ramchandra Shankar Nale & Ors.

... Respondents

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Mr. Rishikesh A. Mohite with K. Patil for the petitioner.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : NOVEMBER 18, 2025

P.C.:

1. Present writ petition takes exception to order dated 15th March 2023 passed below Exhibit 32 in Regular Civil Suit No.1910 of 2012 by Civil Judge, Junior Division, Kolhapur, whereby an application filed by respondents seeking appointment of a Court Commissioner has been allowed.

2. Petitioner is defendant in Regular Civil Suit No.1910 of 2012. Respondent instituted suit seeking reliefs of removal of encroachment, mandatory injunction, and perpetual injunction in respect of suit property. It appears that respondent is owner of property bearing City Survey No.1055 admeasuring 204.5 square

metres, whereas petitioner owns property in City Survey No.1054. There appears to be a serious dispute as to boundaries between City Survey Nos.1054 and 1055. Parties are litigating against each other and claiming rights over disputed portion. In this background, application below Exhibit 32 filed by respondents–plaintiffs was considered and allowed by Trial Court, directing joint measurement of City Survey Nos. 1054 and 1055 through the Taluka Inspector of Land Records, Karveer.

3. Learned advocate appearing for petitioner raises twofold objection. According to him, firstly, Trial Court has erroneously allowed application when the evidence of parties is not yet recorded. Secondly, plaintiffs are attempting to collect evidence through the Court Commissioner, which is not permissible in law.

4. Perusal of impugned order would depict that to determine real issue of controversy between parties, joint measurement of plaintiffs' and defendant's land would be necessary. On the basis of measurement report, real issue in controversy will come on record. Furthermore, there would be no prejudice caused to defendant.

5. Order XXVI Rule 9 of Civil Procedure Code, 1908, empowers Court to appoint Court Commissioner for local investigations if it is

necessary to resolve controversy between parties. In facts of the case, when there is clear dispute as to boundaries between City Survey Nos.1054 and 1055, dispute can be resolved solely on the basis of technical measurement to be carried out by TILR.

6. In that view of the matter, this Court do not find jurisdictional error in impugned order so as to invoke writ jurisdiction under Article 226 of the Constitution of India. In result, writ petition stands rejected.

7. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)