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

WRIT PETITION NO. 7090 OF 2008

Murlidhar Sonba Adhalkar

.. Petitioner

Versus

Ashok Shankarrao Bhosale & Anr.

.. Respondents

Mr. Vinayak R. Kumbhar, Mr. Rajendra B. Khaire i/by Ashwini
N. Bandiwadekar for petitioner.
None for the respondents.

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CORAM: ALOK ARADHE, CJ.

DATE: 24th JULY, 2025

ORAL ORDER:

1. In this petition filed under Article 227 of the Constitution of India, the petitioner/defendant has assailed the validity of the order dated 21st August, 2008 passed by the trial court by which the application preferred by the respondents/plaintiffs under Order XXVI Rule 9 of the Civil Procedure Code, 1908 (CPC) has been allowed.

2. Facts giving rise to filing of the instant writ petition, in nutshell, are that the respondent no.1 had filed Regular Civil Suit No. 299 of 1998 against the petitioner seeking relief of permanent injunction. The petitioner/defendant had filed Regular Civil Suit No. 913 of 2001 against the State and respondents/plaintiffs seeking relief of declaration that measurement conducted on 23rd May, 1994 by the TILR in respect of the suit property is illegal.

3. In the civil suit filed by the petitioner/defendant, the petitioner filed an application seeking appointment of the Court Commissioner. Thereafter, the trial court by an order dated 18th December, 2004, appointed TILR, Satara as Court Commissioner. The TILR, Satara submitted the report that the petitioner has not made any encroachment.

4. In the civil suit filed by the respondent no.1, he filed an application seeking appointment of Civil Engineer from PWD as Court Commissioner. The trial court vide impugned order dated 21st August, 2008 has allowed the aforesaid application. Hence, this petition.

5. I have heard the learned counsel for the petitioner. None has appeared on behalf of the respondents. Perused the record.

6. The suit has been filed by the respondent no.1 seeking relief of permanent injunction. The respondent no.1 has to succeed on the strength of his own case and cannot be permitted to collect the evidence by way of appointment of the Court Commissioner. The report of the TILR, Satara is already on record in the suit filed by the petitioner.

7. The impugned order, therefore, suffers from error apparent on the face of the record. It is accordingly quashed and set aside. Accordingly, the writ petition is allowed.

8. Let a copy of this order be forwarded to the trial court.

(CHIEF JUSTICE)