

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13424 OF 2023**

Hamida Shoukat Shaikh & Ors.Petitioners

Vs.

Uttam Ramchandra JadhavRespondent

Mr. Kuldeep U. Nikam with Mr. Omkar A. Shelar and Mr. Akshay Kothawale, for the Petitioners.

Mr. D. D. Rananware, for Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 4th DECEMBER 2025

PC.:-

1. The Petitioners/original defendants impugn order dated 8th August 2023 passed by learned Civil Judge, Senior Division, Vaduj below Exhibit 20.

2. The Respondent/plaintiff filed suit seeking decree of perpetual injunction against defendants, so also claimed that lands of plaintiff and defendants be measured from competent authority and boundaries be fixed. In said suit, plaintiff filed application below Exhibit 20 for appointment of Court Commissioner and to measure lands of plaintiff and defendants. Undisputedly, plaintiff and defendants are adjacent land holders. Plaintiff, therefore, prayed to

issue directions to Deputy Superintendent of Land Records for joint measurement of suit property as well as Block No.2098 belonging to defendants. The trial Court found that lands of plaintiff and defendants are part of Survey No.507. Essentially, there is dispute as regards to boundaries between parties and for purpose of resolving controversy, appointment of Court Commissioner, as prayed, is necessary. Accordingly, order appointing Court Commissioner is passed.

3. Mr. Nikam, learned Advocate appearing for Petitioner took twofold objections to impugned order. According to him, grant of prayer for appointment of Court Commissioner is in nature of final relief claimed in suit. Secondly, original Survey No.507 consists of seven Gat Numbers, however, measurement of land owned by plaintiff and defendants is directed which may not resolve dispute. He further add that present application is nothing but an attempt to collect evidence, which cannot be permitted.

4. Having considered submissions advanced by learned Advocates appearing for respective parties, this Court finds that when there is dispute as to boundaries between parties and when plaintiff and

defendant are adjacent land holders, it is essential for effective adjudication of *lis* to have independent technical measurement map before Court. At this stage, reference can be given to observations of Supreme Court in case of ***Haryana Waqf Board v. Shanti Sarup & Ors.***¹ which reads thus:

“3. The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land.

4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 CPC.

5. The appellate court found that the trial court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorised possession in respect of the suit land by them as per

¹ (2008) 8 SCC 671.

Para 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because the land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected.”

5. In that view of matter, it was essential to exercise jurisdiction under Order 26 Rule 9 of Code of Civil Procedure. Insofar as objection of Petitioners that this is an attempt to collect evidence, it cannot be countenanced in a facts of present case, particularly considering nature of dispute between parties. The second objection that all Gat numbers from Survey No.507 needs to be measured, this Court finds that when there is a dispute as to boundaries between adjacent two gat numbers and Court has directed joint measurement of both gat numbers, it may not be essential to measure entire survey number.

6. In that view of matter, no jurisdictional error found in impugned order. In result, no case is made out to cause interference under Article 227 of Constitution of India.

7. Writ Petition stands rejected.

(S. G. CHAPALGAONKAR, J.)