

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11419 OF 2025**

1. Sangli, Miraj and Kupwad Municipal Corporation at Sangli
Through its Commissioner,
Vaibhav B. Waghmare, Age: 53
 2. The City Engineer,
Sangli, Miraj and Kupwad Municipal Corporation at Sangli
- ..Petitioners
(Orig. Defendants respectively)
- Versus
1. Smt. Vijaymala Babu Satvekar,
Since deceased by his heirs
and legal representatives.
 - 1a. Sou. Kalpana Anil Manglekar,
Aged 48 yrs., Occu. Household,
At Post Sontali, Tal. Karveer,
Dist. Kolhapur.
 - 1b. Sou. Parvati @ Akkatai Tanaji Zutal,
Aged 62 yrs., Occu. Household,
Residing at Takvade, Tal. Shirol,
Dist. Kolhapur.
 2. Shrikant Babu Satvekar,
Age: 51 yrs, Occ: Business,
 3. Sanjay Babu Satvekar,
Age: 45 yrs, Occ: Business,
 4. Smt. Jayashree Sanjay Tandale,
Age: 40 yrs, Occ: Household,
All residing at Satvekar Mala,
Adarsh Colony, Miraj,
Tal. Miraj, Dist: Sangli.
 5. Kisan Bhau Satvekar,
Age: 65 yrs, Occ: Farmer,
Residing at Satvekar Mala,
Kaman Ves, Miraj,
Tal. Miraj, Dist: Sangli.
 6. Balasaheb Bhau Satvekar,
Age: 61 yrs, Occ: Farmer,

Residing at Satvekar Mala,
Kaman Ves, Miraj,
Tal. Miraj, Dist: Sangli.

..Respondents

(No.1 to 4 Orig. Plaintiffs and 5 and 6 are
orig. Defendants Nos.3 and 4 respectively)

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Mr. G. H. Keluskar, Advocate for Petitioners.

Mr. Vishwanath S. Talkute a/w Mr. Pratik Bhojane, Mr. Mahesh
Bhosale, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 13th NOVEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 14.08.2025 passed by Civil Judge Junior Division, Miraj below Exhibit-115 in Regular Civil Suit No.15/2019, whereby application filed by respondents/plaintiffs seeking appointment of Court Commissioner for inspection and measurement of suit property has been allowed.
3. The petitioner is defendant in Regular Civil Suit No.15/2019 pending before Civil Judge Junior Division at Miraj. The respondent nos.1 to 4 instituted said suit seeking relief of perpetual injunction contending *inter alia* that land admeasuring 2000 sq. mtr. out of Survey No.9/2+3+4+5 is owned and possessed by them. They have constructed residential houses over suit land. However, defendant/present petitioner-Corporation directed them to remove construction within ten days. The petitioner-Corporation caused appearance in suit and filed written statement contending that except

2000 sq. mtrs. Northern portion from survey number, entire land has been handed over to Corporation. Since then, Corporation is in possession of property, however, respondents have illegally encroached upon property of Corporation. Eventually, Corporation served notices for removal of unauthorized constructions. It is contention of petitioners that previously respondents had filed Regular Civil Suit No.67/1982. The same has been decided in favour of Corporation and decree has been confirmed by this Court.

4. The respondents/plaintiffs filed application below Exhibit-16 seeking appointment of Court Commissioner under Order XXVI Rule 9 of Code of Civil Procedure contending that they have constructed their houses within area of 2000 sq. mtr. excluding area of 25498 sq. mtrs owned and possessed by Corporation. They are enjoying property of owners. They have obtained water and electricity connections and regularly paying Municipal taxes. Since their houses are in dilapidated condition, they started repairing the same. At this juncture, notices have been issued by Corporation for demolition of property. It is, therefore, their contention that present case raises serious dispute as to boundaries, which can be addressed by local inspection through Court Commissioner.

5. The petitioner opposed said application on the ground that respondents/plaintiffs are attempting to collect evidence and same cannot be permitted. Previously, Commissioner was appointed vide

order dated 04.02.2019 passed below Exhibit-16. Therefore, second application need not be entertained.

6. The Trial Court after considering rival submissions, allowed application of respondents vide order dated 14.08.2025 and directed TILR, Miraj to act as Court Commissioner and carry measurement of land Survey Nos.9/2+3+4+5, 4377 and 4380 total admeasuring 27498 sq. mtrs. situated at Satvekar Mala, Miraj, Dist. Sangli and prepare map of local inspection to ascertain, if area admeasuring 25498 sq. mtrs. in East-West direction from Northern side of suit property is open or not and submit report within period of five weeks.

7. Mr. Keluskar, learned Advocate appearing for petitioners assails order firstly on ground that present suit is instituted simplicitor for decree of injunction. Secondly, already Court Commissioner was appointed and report of inspection is on record. The impugned order is in the nature of permitting respondents/plaintiffs to collect evidence.

8. Mr. Vishwanath Talkute, learned Advocate appearing for respondents/plaintiffs submits that pleading of parties would show, there exists serious dispute as to boundaries/demarcation of property owned by Corporation and properties in possession of plaintiffs. The order passed below Exhibit-16 was regarding appointment of Advocate Mr. Medsinghe as Court Commissioner for purpose of inspection of property to find out if houses of plaintiffs are situated on own properties and not reserved area by Corporation. He would submit

that previous commission was not by expert, who could comment on boundaries of land within ownership of Corporation. Mr. Talkute invites attention of this Court to order dated 18.02.2025 passed in Writ Petition No.2519/2025, particularly observation in paragraph no.6 to contend that this Court also observed that there is dispute about exact location of 2000 sq. mtrs. area possessed by respondents/plaintiffs.

9. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that land bearing Survey No.9/2, 3, 4, 5, 4377 and 4380 admeasuring 27498.08 sq. mtrs. was owned by one Bhau Babu Satwekar. The area to the extent of 25498.08 sq. mtrs. was declared as excess land in his possession. The said excess land was allotted to erstwhile Miraj Municipal Council and they have been put into possession in accordance with sub-section (5) of Section 10 of ULC Act. It is contention of respondents/plaintiffs that they are possessing portion of land, which was left behind after taking possession of excess land from original owner. The petitioner-Corporation contends that plaintiffs are encroachers on area of land, which has been allotted to Corporation.

10. In that view of matter, it is apparent that there is dispute as to boundaries of land in possession of Corporation and area of land in occupation of respondents/plaintiffs. The Trial Court observed that Court Commissioner appointed vide order below Exhibit-16 was not an expert and purpose of commission was limited to inspect nature of

construction. The said commission was not technical one and does not address issue of demarcation of boundaries. Therefore, Trial Court though it fit to allow application for appointment of Court Commissioner and passed impugned order.

11. It is true that normally in suit for injunction, plaintiff will have to prove possession over suit property, so also his right of lawful enjoyment of property. However, in peculiar facts of present case, Court will require to find out if construction raised by plaintiffs or area in their possession is within area put into possession of Corporation or they are encroachers. This issue can be addressed only through expert measurement by Competent Authority. Apparently, so as to resolve controversy between parties, measurement through expert is necessary. The Trial Court is, therefore, justified in exercising jurisdiction under Order XXVI Rule 9 of Code of Civil Procedure while granting application for appointment of Court Commissioner filed by respondents/plaintiffs below Exhibit-115. No jurisdictional error can be observed in impugned order.

12. In result, Writ Petition stands rejected.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE