

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.6326 OF 2025**

Mr. Narendra Mohanrao Patil,
Age:- 59 Years, Occupation:- Agriculture,
Res. 495, Mutha Colony,
Sadarbazar, District- Satara. ..Petitioner

Versus

1. Shri Sujith Himmat Mutha,
Age: 57 Years, Business Trade.
2. Mrs. Shital Sujit Mutha,
Age:- 54 Years, Business Trade,
No.1st and 2nd 41, Mutha Colony,
Sadarbazar, District:- Satara.
3. Mr. Arun Shivajirao Desai,
Age:- 60 Years, Occupation:- Agriculture and Trade,
Rs. Shivsampada, 46 Mutha Colony,
Sadarbazar, District:- Satara. ..Respondents

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Mr. P. B. Gujar, Advocate for Petitioner.
Mr. M. S. Athalye, Advocate for Respondent Nos.1 and 2.
Mr. Dilip Bodake a/w Mr. Sharad Bhosale a/w Mr. Amar Dhumal a/w
Mr. Mohsin Khan a/w Mr. Saiprasad Patil, Advocate for Respondent
No.3.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 08th SEPTEMBER, 2025.**

ORDER:-

1. The petitioner (original plaintiff) impugns order dated 20.01.2025 passed by Civil Judge Senior Division, Satara below Exhibit-32 in Special Civil Suit No.337/2024, thereby rejecting application for appointment of Court Commissioner.

2. The petitioner instituted Special Civil Suit No.337/2024 before Civil Judge Senior Division, Satara claiming relief of specific performance of contract based on agreement to sale of November 2023 and sought further declaration that sale deed dated 25.06.2024 between defendants is not binding on his right.

3. It is contention of plaintiff that lands City Survey No.495/A/51A/1 is owned by defendant nos.1 and 2. They were intending to sale out property as described in claim clause no.1(A). Accordingly, they offered sale land to plaintiff. The plaintiff shown his intention to purchase 2046.17 square meter area @ Rs.30,000/- per square meter. It was finally agreed that sale of land would be for consideration of Rs.6,11,01,000/-. According to plaintiff, defendants procured bogus documents showing valuation of suit property as Rs.2,22,00,000/- only. The petitioner, therefore, filed application below Exhibit-32 before Trial Court under Order XXVI Rule 9 of Code of Civil Procedure seeking appointment of Court Commissioner for measurement of construction and inspection of amenities on suit land. The learned Trial Judge rejected aforesaid application observing that application cannot be considered at this stage, since identification of suit property is not disputed in present case or there is no boundary dispute. As such, appointment of Court commissioner is not warranted.

4. The learned Advocate appearing for petitioner submits that Trial Court failed to consider object and purpose behind Order XXVI Rule 9 as well as Order XXXIX Rule 7 of Code of Civil Procedure. He submits that it is necessary to bring on record true and correct valuation of property. The learned Trial Court has erroneously observed that Court Commissioner would not be necessary, particularly, at stage, when suit is at stage of hearing on temporary injunction application. In support of his contentions he relies upon observations of this Court in case of *Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr.* (Writ Petition No.5138/2024 dated 30.04.2025), *Rawanbapu s/o. Bhimrao Deshmukh and Ors. Vs. Bapurao s/o. Rangrao Deshmukh and Ors.* (Writ Petition No.13293/2022 dated 08.12.2023) and observations in case of *Yashwant Bhaduji Ghuse Vs. Vithobaji Laxman Ladekar*¹.

5. Having considered submissions advanced and on perusal of material tendered into service, it can be observed that petitioner instituted suit seeking decree of specific performance of contract based on oral agreement to sale in respect of suit property described in claim clause of suit. The petitioner filed application under Order XXXIX Rules 1 and 2 of Code of Civil Procedure alongwith suit, which is pending adjudication. Apparently, suit is yet to reach stage of issue or trial. At this stage petitioner tendered application under Order XXVI Rule 9 read with Order XXXIX Rule 7 of Code of Civil Procedure seeking appointment of Court Commissioner. Only reason mentioned

¹ 2010 (3) Mh.L.J. 956.

in application is that correct valuation of suit property is not available and defendants are trying to change nature of suit property, which may affect its valuation. According to petitioner, defendants are making every attempt to show unrealistic valuation of property, which may prejudice rights of plaintiff, hence, he wants report of commission on record showing actual position of property alongwith its constructions and attachments.

6. The learned Trial Court rightly observed that in suit for specific performance of contract there is no necessity to appoint Court Commissioner, particularly for reasons made by plaintiff. The Trial Court has rightly observed that in absence of boundary dispute or dispute as to identification of property, powers conferred under Order XXVI Rule 9 of Code of Civil Procedure need not be invoked.

7. As can be observed from provisions of Order XXVI Rule 9, when Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining market value of any property, Court may issue commission to such person as it think fit directing him to make such investigation and to report thereon to Court. However, looking to the nature of prayers in application made by petitioner, it is discernible that he wants to appoint Deputy Superintendent of Land Record to cause measurement of property and report as to construction available on spot. From prayer Clauses in application Exhibit-32, it cannot be said that commission is sought for

valuation of property. The prayer is only for measurement of property and to report about construction available on spot. The Deputy Superintendent of Land Record or Authorities in Land Record Department or Town Planner cannot provide valuation of property.

8. In this background, when suit itself is filed for specific performance of contract, without semblance of dispute as to boundaries or identification of property, there is no need for local investigation or appointment of Court Commissioner for the purpose mentioned in Order XXVI Rule 9 of Code of Civil Procedure. If petitioner wants to establish valuation of property, he may lead evidence from Valuer or other Agency, who can throw light on the same. In any case, there was no grounds made out to appoint Court Commissioner as prayed by plaintiff.

9. Although learned Advocate appearing for petitioner relies upon observations of this Court in aforementioned cases, in all those cases issue of boundary dispute or identification of property was involved. This Court has consistently observed that in case of a boundary dispute, appointment of a Cadastral Surveyor to conduct a joint measurement of the suit land and adjacent land is necessary to decide the lis in a just manner. There cannot be dispute over aforesaid proposition. However, in facts of present case, commission is not sought for measurement of property in pursuance of dispute as to boundaries. It is obvious that petitioner wants to collect evidence

through appointment of Court Commissioner, which is not permissible under law.

10. In the result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025