

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8431 OF 2025**

Uttam Dhondiram Gavali & Ors.Petitioners

Vs.

Vitthal Tukaram Gavali
(Since Deceased Through Legal Heirs)Respondents

Mr. Kuldeep U. Nikam, for the Petitioners.

Mr. Tejapal Ingle, for the Respondent Nos.1 to 3.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 9th SEPTEMBER 2025

PC.:-

1. The Petitioners/Original Defendants in Regular Civil Suit No.99 of 2024, pending before learned Civil Judge, Junior Division, Tasgaon impugn order dated 8th May 2025, thereby allowing Application Exhibit-30 filed by Respondents/Original Plaintiffs seeking appointment of Court Commissioner in terms of Order XXVI Rule 9 of Civil Procedure Code.

2. Learned counsel appearing for Petitioners invites attention of this Court to prayers in suit and submits that suit itself is instituted for fixation of boundaries of suit property and

consequential relief of perpetual injunction is sought. He would urge that, *prima facie*, there is no dispute as to boundaries or there is no allegation of encroachment made by the Defendants. In that view of the matter, this was not fit case to exercise jurisdiction under order XXVI Rule 9 of Civil Procedure Code.

3. The learned counsel appearing for Respondents/ Plaintiffs, however, supports order contending that pleadings in suit would show that defendants are trying to disturb possession of plaintiffs and also raising dispute as regards to suit land. Therefore, so as to deal with issue involved in suit, appointment of Commissioner is absolutely necessary and Trial Court has exercised jurisdiction in accordance with law.

4. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that provisions under Order XXVI Rule 9 of Civil Procedure Code can be exercised in specified contingencies.

5. It is trite that, when there is dispute as regards to demarcation of land or boundaries, and measurement through

Cadastral Surveyor is necessary, powers under Order XXVI Rule 9 of Civil Procedure Code can be exercised.

6. In present case looking to prayers in plaint, final relief is sought for fixation of boundaries. There is no allegation that particular portion of land has been encroached by Defendants and Plaintiff is seeking possession thereof. In such a case, exercise of jurisdiction as to appointment of Court Commissioner would not be necessary to adjudicate controversy in suit.

7. At this stage, learned counsel appearing for Respondents submits that Respondents are intending to amend suit to bring appropriate pleading and prayers so as to deal with encroachment made by Defendants. In case, such an amendment is made and looking to contents of such amendment and prayers, if Court finds it necessary to appoint a Court Commissioner, Respondents are at liberty to file such an Application before Trial Court, who shall consider same on its own merits. However on the basis of pleading and prayers as it stands today, appointment of Court Commissioner before recording of evidence of parties is unwarranted.

8. With these observations, Writ Petition is allowed in terms of prayer clause-(a) with liberty in favour of Respondents to make an Application for appointment of Court Commissioner and subject to amendment to be made in plaint make an Application reiterating prayer for appointment of Court Commissioner.

9. Needless to state that, contentions of parties are kept open for consideration at appropriate stage of suit.

(S. G. CHAPALGAONKAR, J.)