

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

WRIT PETITION NO. 10118 OF 2024

Bhaskar Popat Pawar ...Petitioner

Versus

Pandharinath Tulshiram Pawar and ors. ...Respondents

Mr. Nikhil Hire, a/w Sampada Patil, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 15th APRIL, 2025

SANTOSH
SUBHASH
KULKARNI

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Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 4th May, 2024 passed by the learned Civil Judge, Malegaon, District Nashik, whereby an application preferred by the petitioner – defendant No.1A to appoint Deputy Superintendent, Land Record, Malegaon, as a Court Commissioner to measure the land bearing Gat Nos.328 and 339 came to be rejected.
3. Respondent No.1 – plaintiff instituted a suit for declaration that the measurement carried out vide MR No.766/1/2/2011 is illegal and does not bind the plaintiff and the defendants be restrained from causing obstruction to

the possession and enjoyment of the plaintiff of the property bearing Gat No.328 and the common area therein.

4. In the said suit, initially the applicant – defendant No.1A had filed an application for appointment of the Court Commissioner to measure Gat Nos.328 and 339. By an order dated 4th January, 2023, the said application was rejected.

5. It seems after the evidence of the plaintiff was over defendant No.1A again preferred an application reviving prayer for appointment of the Court Commissioner.

6. By the impugned order, the learned Civil Judge was persuaded to again reject the application opining that the application for appointment of the Court Commissioner was already rejected by ascribing reasons, and having regard to the nature of the dispute, the appointment of the Court Commissioner was not necessary to elucidate the matter in controversy.

7. The learned Counsel for the petitioner submitted that though a part of the alleged encroached portion of 15 R had been delivered to defendant No.4 in pursuance of the orders passed by the Sub-Divisional Officer yet there is a dispute about the balance 8.5 R land, which the plaintiff has

allegedly encroached. In order to have a clear picture about the nature of the encroachment, the appointment of the Court Commissioner is necessary.

8. I have perused the averments in the plaint. The plaintiff has approached the Court with a case that the measurement, which has been carried out by the Cadestal Surveyor, vide MR No.766/1/2/2011, is illegal and it does not bind the plaintiff as the plaintiff has not committed encroachment over the disputed land. The learned Civil Judge was of the view that the onus rests on the plaintiff to establish the said fact.

9. Having regard to the aforesaid nature of the suit, the view taken by the trial court appears to be justifiable. If the plaintiff fails to establish that the measurement carried out by the Cadestal Surveyor for MR No.766/1/2/2011 is not illegal and valid, the consequences that emanate from the said measurement would follow. The only aspect that, however, deserves consideration is, it is necessary to examine the Cadestal Surveyor, who had carried out the said measurement vide MR No.766/1/2/2011. In the event, the said Cadestal Surveyor is not examined to prove the map, which has been prepared, the defendants may suffer prejudice.

10. Thus, granting liberty to the defendants to summon and examine the Cadestal Surveyor, who had carried out the measurement vide MR No.766/1/2/2011, the petition stands disposed.

[N. J. JAMADAR, J.]