

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

**WRIT PETITION NO. 2419 OF 2025**

Umair Saud Patel and ors. ...Petitioners

**Versus**

Tarannum Parwas Suse and ors. ...Respondents

Mr. Rajesh Datar, for the Petitioners.

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**CORAM: N. J. JAMADAR, J.  
DATED: 3<sup>rd</sup> MARCH, 2025**

**ORDER:-**

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 23<sup>rd</sup> November, 2024 passed by the learned Civil Judge, Bhiwandi, whereby while allowing the application preferred by defendant No.1 for measurement of the suit land by Deputy Superintendent, Land Records, Bhivandi, as a Court Commissioner, the Trial Court directed the joint measurement of Survey Nos.129/2A, 23/5 and 129/1 and a report alongwith a map indicating the encroachment by using different colours.
3. Mr. Datar, the learned Counsel for the petitioners, submitted that respondent Nos.1 and 2 had instituted a suit simpliciter for removal of encroachment over survey

No.129/2A. Yet, the respondents did not seek appointment of the Court Commissioner to establish the factum of the alleged encroachment. Defendant No.1 in addition to filing a written statement filed a counter-claim seeking a declaration that the map prepared by the TILR in respect of Survey Nos.129/2A and 23/5 dated 2<sup>nd</sup> February, 2020 is bogus and not binding on defendant No.1.

4. In the said suit, defendant No.1 filed an application for appointment of a Court Commissioner to measure the land bearing Survey No.129 and demarcate the suit land. By the impugned order, the learned Civil Judge was persuaded to allow the application and direct that there should be a joint measurement of Survey Nos.129/2A, 23/5 and 129/1. The learned Civil Judge was of the view that to ascertain the encroachment, if any, and the exact location of the lands of the plaintiffs and defendant No.1, it was necessary to have a joint measurement of Survey Nos.129/2A, 23/5 and 129/1.

5. Mr. Datar, the learned Counsel for defendant Nos.2 to 5, would urge that the Trial Court has passed a blanket order of measurement of the lands, over the location and area of which there is no dispute. The application preferred by defendant No.1 was for measurement of the land bearing

Survey Nos.129 only. Therefore, the Trial Court could not have directed the joint measurement of the other survey numbers and, much less, directed the Deputy Superintendent, Land Records, to show encroachment. It was submitted that the proof of alleged encroachment was to be adduced by the plaintiffs and the said fact could not have been delegated to the Deputy Superintendent, Land Records.

6. I have perused the averments in the plaint and the counter-claim. The plaintiffs claimed to have acquired survey No.129/2A under a registered sale deed dated 20<sup>th</sup> December, 2010. Plaintiff No.2 has purchased the land bearing Survey No.23/5 which is adjacent to the land bearing Survey No.129/2A. Defendant No.1 has purchased 22.4Are land out of Survey No.129/1, from defendant Nos.2 and 3. Thereafter, on 2<sup>nd</sup> February, 2020 there was a joint measurement of the lands bearing Survey Nos.129/1, 129/2 and 23/5. A map vide MR/154/2020 and 155/2020 came to be prepared. It transpired that the defendant No.1 has committed encroachment over the portion of the land bearing Survey No.129/2A and Survey No.23/5. Hence, the suit for removal of the encroachment.

7. Defendant No.2 has not only resisted the suit but also filed a counter-claim asserting that the said measurement carried out on 2<sup>nd</sup> February, 2022 and the map were bogus and do not bind defendant No.1. It is in that context defendant No.1 had sought appointment of Court Commissioner to measure Survey No.129 and demarcate the lands.

8. The learned Civil Judge, as noted above, was of the view that a joint measurement of the land bearing Survey Nos.129/2A, 23/5 and 129/1 would be necessary to ascertain whether there is any encroachment and also the exact location of the respective lands.

9. The view taken by the learned Civil Judge appears justifiable. It is trite that, when there is an allegation of encroachment by the adjacent land holder, the joint measurement of both the lands is necessary to arrive at the conclusion as to whether there is, in fact, any encroachment. In the case at hand, the plaintiffs have approached the Court with a case that the defendants had committed encroachment over a specific portion of the land bearing Survey Nos.129/2A and 23/5. The fact that the lands bearing Survey Nos.129/2A, 23/5 and 129/1 are located

adjacent to each other is not in contest. In this view of the matter the joint measurement of the lands is the only method to resolve the controversy. A useful reference in this context can be made to the decision of the Supreme Court in the case of *Haryana Waqf Board Vs. Shanti Sarup*<sup>1</sup>

10. The submissions of Mr. Datar that the learned Trial Court could not have delegated the function of determining the encroachment and showing the same in different colours, does not advance the cause of the petitioners. The Court has merely indicated that if the Cadestal Surveyor finds encroachment, the same be shown in different colours. Ultimately, it would be for the Trial Court to appreciate the report of the Court Commissioner, subject to the objections which may be filed thereto and also the evidence which the Cadestal Surveyor adduces if he is examined as a witness touching the report of Court Commission, and, thereafter, determine whether there is in fact encroachment. In the aforesaid view of the matter, I am not inclined to interfere with the impugned order.

11. The petition stands dismissed.

[N. J. JAMADAR, J.]

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<sup>1</sup> (2008) 8 SCC 671.