



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.5472/2025
Ramchandra V Vishwas and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.S. Tiwari, Advocate for petitioner.
Mr. P.R. Parsodkar, Advocate for Caveators/resp. nos.1 and 2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 18-09-2025.

Learned Counsel for the petitioner seeks permission to delete respondent nos.4 to 11.

2. Leave granted.
3. Amendment be carried out forthwith.
4. Heard learned Counsel for the petitioner.
5. The petitioner's challenge is to order dated 31-07-2025 passed by the trial Court allowing the application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner, which was filed by plaintiff no.1 in the suit. Petitioner's primary contention is that the impugned order directs the appointment of Court Commissioner to measure the field Survey No.147 entirely. Apart from this, by Clause 3(d) of the operative portion of the order it is directed that the Commissioner should measure the area of land respectively possessed by the owners of field Survey Nos.'147/1, 147/2, 147/3, 147/4, 147/5 and plaintiffs' and in this regard learned Counsel for the petitioner vehemently

submits that, this particular direction amounts to measurement of the lands for the purpose of ascertaining the possession of the parties which is impermissible in view of the settled position of law. He submits that if the measurement is carried out for identifying the possession of the properties, then it will amount to collection of evidence.

6. Mr. Parsodkar learned Counsel, who appears on Caveat on behalf of respondent nos.1 and 2, submits that in view of the controversy involved in the suit the appointment of Court Commissioner is necessary and as regards Clause (d) of para 3 of the operative part of the order he submits that in view of the position of law, necessary clarification may be made with respect to the measurement to be carried out. He does not dispute the position of law that the measurement of the lands to ascertain the possession of the properties is uncalled for.

7. In view of the limited controversy about directions for measurement to ascertain the possession of the properties, it is hereby clarified that the Court Commissioner appointed by impugned order dated 31-07-2025, shall carry out the measurement as per the operative portion of the impugned order. However, as regards the para (d) of Clause (3), it is clarified that the Commissioner to measure the area of land of field Survey

Nos.'147/1, 147/2, 147/3, 147/4, 147/5' as it exists today without mentioning the names of parties who are having possession.

8. In view of this clarification, no interference is called for in the rest of the impugned order.

9. In view of this, writ petition is disposed of.

(Prafulla S. Khubalkar, J.)