



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO 95 OF 2025

Madhav s/o Raghunath Yerne
Through Legal Heirs & others ... Petitioners

Versus

Ganpat Raghunath Yerne (dead)
Thr.LRs and others ...Respondents.

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Ms.Kirti Satpute, Advocate for petitioners.
None for other respondents.
Mr. Nitin Bhishikar, Advocate for respondent no.8.

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CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 31st JULY, 2025.

FINAL ORDER

1. Heard Ms. Kirti Satpute, learned counsel for the petitioners,
Mr. Nitin Bhishikar, learned counsel for the respondent no.8.
2. The petitioners' challenge is to the order dated 25.08.2023
passed by the Trial Court on Exhibit-1 and the order dated 25.10.2024
passed on the application (Exhibit-249) for an appointment of the Court
Commissioner.
3. The petitioners' grievance is against the suo moto order passed
by the Trial Court on Exhibit-1 at the stage of final arguments by

observing that in view of the controversy being related to removal of encroachment, appointment of Court Commissioner is necessary. Further the petitioners' grievance is against the order passed by the Trial Court on the application filed by the plaintiffs for appointment of the Court Commissioner.

4. The learned counsel for the petitioners submitted that in the suit for removal of encroachment, the appointment of the Court Commissioner would amount to collection of evidence evidence and the same ought not to have been allowed. She submitted that the plaintiffs in the suit were required to prove their case on the basis of available evidence and the appointment of Court Commissioner at the stage of final argument is not at all warranted.

5. Opposing the Writ Petition, the respondents have submitted that in the suit filed by them, the defendants-petitioners have filed a counter claim seeking partition and separate possession and, therefore, in order to identify the exact locations of the properties, appointment of the Court Commissioner became necessary. He submitted that in view of the controversy involved and considering the suo moto order passed by the Trial Court on 25.08.2023, the application filed by the respondents-plaintiffs seeking an appointment of the Court Commissioner was rightly allowed.

6. The respondents, who are plaintiffs, have filed suit for removal of encroachment, recovery of possession and permanent injunction. The petitioners-defendants have filed their written statement along with counter claim. At the stage of final arguments, for ascertaining the area of encroachment, it was revealed that the measurement map, which was on record was prepared by a person, who was retired Talathi and could not be considered as an Expert in that field. It was observed that the Court was not in a position to arrive at any definite conclusion on the basis of the measurement map, which was on record. Accordingly, the Court passed suo moto order dated 25.08.2023 and directed the parties to do the needful. Pursuant thereto, the plaintiffs filed an application on Exhibit-249 for appointment of Court Commissioner. The defendants resisted the application by filing their say. By order dated 25.10.2024, the Trial Court has allowed the application by appointing Taluka Inspector of Land Records as Court Commissioner to carry out the measurements of the suit properties. It is pertinent to note that in view of the controversy involved, the Trial Court had observed that the appointment of the Court Commissioner was necessary to ascertain exact area of encroachment and that on the basis of measurement through T.I.L.R. the Court would be in a position to decide the actual controversy involved between the parties.

7. It has to be noted that although there is a measurement map

on record filed by the plaintiffs, which was prepared by a retired Talathi, however, in view of the admission recorded during evidence of this witness that he is not an Expert in the field, it was desirable rather necessary for getting the land measured through an Expert and the appointment of T.I.L.R. as Court Commissioner cannot be faulted.

8. The learned counsel for the petitioner, vehemently submitted that the suo moto order passed by the Trial Court on Exhibit-1 by relying on the judgment of this Court in **Vijay s/o Shrawan Shende and ors.Vs. State of Maharashtra** reported in **2009 (4) ALL MR 601** is erroneous since the said judgment cannot be made applicable directly to the facts of this case. She submitted that in the instant case earlier measurement map was on record and in absence of any objection, there was no need for appointment of the Court Commissioner. Counsel for the petitioners relied upon the judgment of this Court in **Chandrarao s/o Hanumantrao Wable Vs. Dhondurao s/o Fula Patil** reported in **2012 (2) ALL MR 267** and submitted that in absence of any grievance about earlier map, the appointment of the Court Commissioner was not necessary. In the instant case, although there was no objection about the measurement map submitted by the plaintiffs earlier, however, it was clear that the said measurement map was not prepared by an Expert and, therefore, Court found it necessary to get Commissioner appointed. As such, the judgment

relied upon by the petitioners is of no assistance.

9. In view of the controversy involved in the suit, related to removal of encroachment and in view of the counter claim raised by the defendants, there is a necessity for measurement of the land through an Expert. As such the directions to appoint T.I.L.R. as Court Commissioner does not need any interference. The arguments submitted by the petitioners in this regard are not acceptable.

10. Having regard to the above mentioned overall factual and legal aspects there is no perversity in the impugned order passed by the Trial Court directing the appointment of T.I.L.R. as Court Commission. In view of the controversy involved, I am of the firm opinion that measurement of the properties through Court Commissioner is desirable and necessary for resolving the actual controversy involved between the parties. Hence, no interference is called for with the impugned orders. The Writ Petition deserves to be dismissed, the same is dismissed. There shall be no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

Mukund Ambulkar