IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3099 OF 2024

Shri Baliram Gaba Pokale,
Age: 54 years, Occu: Agriculture & Service,
R/o. Garegaonle Khurd, presently at Sharda Nagar,
Chopda, Tq. Chopda, Dist. Jalgaon.
Through Special Power of Attorney Holder,
Shri. Ashok Chunilal Borse,
Age: 44 years, Occu: Agriculturist,
R/o. Garegaonle Khurd, Tq. Chopda, Dist. Jalgaon.
.....**PETITIONER**
(Ori. Plaintiff)

VERSUS

1. Shri Ashok Sitaram Patil,
Age: 69 years, Occu: Agriculture,
R/o. Garegaonle Budruk, Tq. Chopda, Dist. Jalgaon.

2. Shri. Sachin Ashok Patil,
Age: 41 years, Occu: Agriculture,
R/o. Garegaonle Budruk, Tq. Chopda, Dist. Jalgaon.

3. Shri. Prabhakar Shivram Dhangar,
Age: 54 years, Occu: Agriculture,
R/o. Garegaonle Khurd, Tq. Chopda, Dist. Jalgaon.

4. Shri. Sudhakar Shivram Dhangar,
Since died thr. L.Rs.

4A. Shri. Ujjwal Sudharkar Bagule (Dhangar)
Age: 41 years, Occu: Private Service,
R/o. Ganesh Tower, Flat No.5, Near Nighal Park,
Shivajinagar, Satpur, Nashik-422012.

4B. Shri. Malhari Sudhakar Bagule (Dhangar),
Age: 45 years, Occu: Agriculture,
R/o. At post Nimbhora, Taluka Amalner,
Dist. Jalgaon-425401

4C. Smt. Malubai Sudhakar Bagule (Dhangar)
Age: 57 years, Occu: Anganwadi Sevika,
R/o. At Gorgavle Khurd, Post Bhokari,
Taluka Chopda, Dist. Jalgaon-425107

4D. Smt. Manisha Sharad Ranade (Dhangar),
Age: 43 years, Occu: Housewife,
R/o. At Narwade, Post Aadgaon,
Tq. Chopda, Dist: Jalgaon-425111

5. Shri. Eknath Rajaram Dhangar,
Age: 43 years, Occu: Agriculture,
R/o. Garegaonle Khurd, Tq. Chopda, Dist. Jalgaon.

.....**RESPONDENTS**
(Ori. Defendant Nos.1 to 5)

Mr. B. B. Kulkarni, Advocate for the Petitioner
Mr. G. L. Gujar, Advocate for Respondent nos.1 to 5

CORAM : AJIT B. KADETHANKAR, J.
DATED : 22ND OCTOBER, 2026

JUDGMENT :-

. Rule. Rule made returnable forthwith.

2. Parties are at controversy over the boundary dispute of their agricultural properties. Respondents initiated a proceeding under the Mamlatdar's Courts Act, 1906 against the petitioner bearing application no.4 of 2015 to have road from the land owned by the petitioner. The said proceeding came to be turned down by the Mamlatdar on 13.04.2016. The said order remained intact.

3. On the other hand, the petitioner filed Regular Civil Suit No.64 of 2015 seeking perpetual injunction and declaration against the respondents in the Court of learned Civil Judge Senior Division, Chopda. The respondents defended the suit by entering written statement and also extending the same with counter claim seeking mandatory injunction against the petitioner/plaintiff for providing a passage through the land of the petitioner. After the issues were framed and plaintiff entered his examination-in-chief, the respondents/defendants filed an application under Order XXVI Rule 9 of the Civil Procedure Code seeking appointment of Commissioner. The application at paragraph nos.2 and 3 recites thus:

> *२) प्र.वादींनी यापुर्वी तहसिलदार सो. चोपडा यांचे न्यायालयात वहीवाट अर्ज क्र.४/२०१५ च्या रस्तामिळणे बाबत दाखल केलेला होता. सदरचा प्र.वादी यांचा वहीवाटी अर्ज दि.१२/४/२०१६ रोजी नामंजूर करुन अर्जदार यांनी त्यांच्या मालकीच्या गट नं. ५५/२अ/२ मध्ये बैलजोडी, ट्रॅक्टर व औतफाटे इ. च्या वहीवाटीसाठी खाकड नाल्यामध्ये अस्तीत्वात असलेल्या रस्त्याचा वापर करावा असे आदेश पारीत केलेले आहेत प्रत्यक्षात त्याठिकाणी खाकड नाल्यातुन रस्ता अस्तीत्वात नाही व सदर नाल्यावर केटीवेअरचे बांधकाम झालेले असून त्याठिकाणी पावसाळयात चारमहिने पाणी वाहत असते तसेच हतनुर धरणातुन सोडलेले पाणी सुध्दा या नाल्यातुन वाहत असते त्यामुळे सदर नाल्यातुन वहीवाट करणे शक्यनाही म्हणून प्र.वादी यांनी मे. कोर्टा समोर रस्त्याची परिस्थीती येणे कामी कमिशनर नेमणुक व्हावी म्हणून सदरचा अर्ज दाखल करणे भाग झाले आहे.*

३) कमिशनर नेमणुक होवून प्र.वादी यांनी प्रती दाव्यासोबत परिशिष्ठ अ दाखल केल्याप्रमाणे खाकड नाल्यातुन वहीवाट करणेस रस्ता आहे किंवा नाही तसेच प्र.वादींच्या म्हणण्याप्रमाणे गोरगावले बु. रोडावरुन वादीचे गट नं.५५/२अ/२ या शेतमिळकतीसाठी असलेल्या वापर रस्त्याची परिस्थीती कशी आहे याबाबतचा अहवाल मे. कोर्टात मागविण्यात यावा.

4. The sum and substance of the application is that since the Mamlatdar turned down applicant's application and directed him to use the way through *Khakad Nala*, infact the *Khakad Nala* is of not at all use to the applicants. Hence, a Commissioner was sought to be engaged to demonstrate that the *Khakad Nala* is not worth to be used together his own land. The said application came to be allowed by the Trial Court vide impugned order dated 14.02.2023. Against the said order, plaintiff is before this Court.

5. Mr. B. B. Kulkarni, learned Advocate for the petitioner would submit that the application is against the scheme under Order XXVI Rule 9 of the Civil Procedure Code. He submits that looking to the contents of the application itself, the application was filed to frustrate the order passed by the Mamlatdar as also to bring on record certain facts by way of collection of evidence. Mr. Kulkarni submits that the

defendants are required to establish their case by leading independent evidence. With this, it is prayed to allow the Writ Petition.

6. Per contra, Mr. G. L. Gujar, learned Advocate for respondents would stand with the reasoning rendered by the Trial Court. He would submit since there is boundary dispute between the parties, the application was absolutely qualified to be allowed in view of the settled position of law. He would submit that it would be wrong to say that the application was filed with an ulterior motive to collect the evidence.

7. I have heard both the sides extensively. Apparently the suit started with a prayer at the behest of the plaintiff seeking perpetual injunction against the defendants. In the suit, defendants filed counter claim seeking relief against the plaintiff to have a pass-way through the land owned by the plaintiff. The parties had been earlier in the controversy under the Act of 1906 before the Mamlatdar. It is not in dispute that the Mamlatdar turned down the application filed by the defendants and directed him to use the way through *Khakad Nala*. The said order is not taken up in challenge by the defendants before the Revisional Authority. Now, looking to

the contents of the application, particularly at paragraph nos.2 and 3, it is evident that the Commissioner was sought to be employed to state before the Court that the *Khakad Nala* was not worth to be used by the defendants.

8. After discussing the arguments in so many words, ultimately the Trial Court allowed the application; however observing that the Commission has been appointed pursuant to the application filed by the defendant to report the geographical condition. Apparently, a Commission appointed for the purpose as is mentioned in the impugned order amounts to collection of evidence. It is for the defendants to bring on record as to how the *Khakad Nala* is not worth for them to use. Commission cannot be employed as a short cut method to avoid the exercise of leading independent evidence to which the defendants are bound.

9. In view of the above, I do not subscribe to the reasons recorded by the Trial Court while allowing the application. Resultantly, the petition must succeed. The petitioner succeeds in convincing the Court to exercise jurisdiction under Order 227 of the Constitution of India. Hence, I pass following order:

ORDER

a. Writ Petition stands allowed.

b. Impugned order dated 04.12.2023 passed by learned Civil Judge Junior Division, Chopda on an application below Exhibit 54 in Regular Civil Suit No.64 of 2015 is quashed and set aside.

c. The application at Exhibit 54 stands rejected.

d. Rule made absolute in above terms.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2026