IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

913 WRIT PETITION NO.13781 OF 2024

Khandu Bansi Gadekar
VERSUS
Tulshiram Bansi Gadekar And Others
.....
Shri. Prathamesh M. Borde i/by. Shri. Shailesh S. Chapalgaonkar,
Advocate for the Petitioner
Shri. Amol S. Gandhi, Advocate for Respondent No.1
.....

CORAM : AJIT B. KADETHANKAR, J.
Dated : OCTOBER 13, 2026

PER COURT :-

. Heard learned Advocates appearing for the respective parties.

2. Considering a short controversy involved in the Writ Petition, the same is being disposed of at the admission stage.

3. Respondent No.1 - Plaintiff filed Regular Civil Suit No.411 of 2022 in the Court of learned Jt. Civil Judge Senior Division, Rahata, against the Petitioner and the other Respondents seeking possession of encroached land from Respondent Nos.2 and 3 and one Ganesh Narayan Gadekar (Orig. Defendant Nos.1 to 3). In the suit, the Plaintiff filed an Application below Exh.6 under Order-XXVI, Rule-9 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'C.P.C.') for appointment of a Court Commissioner to carry out the measurement of the properties and to prepare a map to produce before the Court. The said Application

came to be allowed by the Trial Court vide order dated 21.11.2024. Feeling aggrieved thereby, the Petitioner – Orig. Defendant No.4 has filed this Writ Petition.

4. The Petitioner contends that, the Application is apparently pre-mature, since it was filed together with the plaint. It is pointed out that, yet the issues are to be framed and hence the Trial Court was not justified in allowing the Application at this juncture.

5. Shri. Gandhi, learned Advocate for Respondent No.1 - Plaintiff submits that, the Petitioner has no *locus standi* to file this Writ Petition. He submits that, in fact looking to the prayer clauses of the plaint, it is apparent that, no relief is claimed against the present Petitioner. He further submits that, since the dispute between the Plaintiff and the contesting Defendant Nos.1 to 3 is about boundaries and encroachment, it is trite that, the appointment of Court Commissioner is correct remedy for better adjudication of the suit. Thus, Shri. Gandhi, learned Advocate for Respondent No.1 - Plaintiff prays that the Writ Petition be dismissed.

6. Admittedly, the Application is filed at pre-mature stage. After filing of the suit, even all the Defendants have not yet filed their Written-statement/s. It is contended that, *ex party* order is also passed against some Defendants and their right to file Written-statement is

forfeited by the Trial Court. It is also true that, in the suit, no relief is claimed against the present Petitioner. However, considering the fact that, even the real controversy among the parties is yet to be framed by the learned Trial Court by exercising jurisdiction under Order-XIV of the CPC, I find that, the Application below Exh.6 is filed at too pre-mature stage. I am not in disagreement with the contention of Shri. Gandhi that, if there is dispute as regards to encroachment or boundary, the Trial Court is justified in appointing the Court Commissioner. However, for want of framing issues in the suit, even the object to file this Application cannot be justified. Suffice to note, once the Trial Court frames the issues identifying the controversy as regards to the boundaries or encroachment, certainly the Plaintiff is justified in filing such Application. In view of this, I deem it appropriate to allow the Writ Petition, however by keeping right open of the Plaintiff to file such Application afresh at the appropriate stage during the trial proceedings. Hence, I pass the following order.

ORDER

(i) The Writ Petition stands allowed.

(ii) The order dated 21.11.2024 passed by the learned Jt. Civil Judge Senior Division, Rahata, on the Application - Exh.6 is quashed and set aside.

(iii) The Respondent No.1 - Plaintiff is at liberty to file appropriate Application for appointment of Court Commissioner at appropriate stage

of the Trial.

(iv) It is clarified that, this Court has not expressed any opinion on merits of the case of either side. If such Application is filed by the Plaintiff, the learned Trial Court shall decide it on its own merits without being influenced by any of the observations made by this Court in this order.

(v) Writ Petition stands disposed of.

(AJIT B. KADETHANKAR, J.)

GGP