



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

**WRIT PETITION NO. 2594 OF 2024**

Venkatesh Chemical Pvt Ltd Thr Its President Surekha  
Vijaykumar Dandnaik And Another

**VERSUS**

Ahmadi Tarekh Ahemad Bashrat Ahmed And Others

...

Mr. L. H. Kawale i/b Mr. S. J. Salgare, Advocate for the  
Petitioner

Mr. S. A. Deshmukh, Advocate for Respondent nos.1 to 4

.....

**CORAM : AJIT B. KADETHANKAR, J.**

**DATED : 30<sup>TH</sup> MARCH, 2026**

**FINAL ORDER :-**

. The respondents have filed Regular Civil Suit No.78 of 2023 in the Court of learned Civil Judge Senior Division, Osmanabad seeking demarcation of boundaries of the suit property and perpetual injunction against the defendants. In the suit, before the issues could be framed under Order 14 of the CPC, the petitioner took recourse to Order 26 Rule 9 of the Civil Procedure Code seeking an appointment of Court Commissioner to fix the boundaries to ascertain the location of the suit property, to prepare a map and to produce before the Court. This application was opposed by the respondents/defendants.

2. After considering the arguments of the rival parties vide impugned order dated 13.12.2024, the learned 3<sup>rd</sup> Jt. Civil Judge Junior Division allowed the application at Exhibit 18

and appointed Deputy Superintendent of Land Records authorized to conduct Court Commission. The operative part of the order reads thus:

1. *Application (Exh 19) is allowed.*
2. *Dy. S.L.R. Osmanabad is directed to hold court commissioner in order to ascertain the location of whole survey 48 adm. 8 H. 41 R. situated at Kasabe Tq. Dist. Osmanabad.*
3. *While holding the commission the commissioner may consider 7/12 extract, the map, the lay out together.*
4. *The plaintiffs to deposit the court commissioner fees in court or with the concerned office within 15 days from this order.*
5. *The commissioner shall submit its report within 1 (one) month.*
6. *Issue letter to commissioner accordingly on P.F.*

3. Mr. L. H. Kawale i/b Mr. S. J. Salgare, learned Counsel for the petitioner has raised strong objections to the impugned order. He would submit that the application is liable to be dismissed on the sole ground that it was filed and decided at very premature stage of the Trial. He would submit that the petitioner could have filed such an application if the circumstances warranted. That, it ought to be done at an appropriate stage. He submits that an application under Order 26 Rule 9 of the CPC cannot be filed for creation and collection of evidence. As such, he prays to allow the Writ Petition.

4. Mr. S. A. Deshmukh, learned Counsel for the plaintiffs infact advocates the application and the observations made by the Trial Court. He would submit that the application cannot be said to have been filed for creation and collection of evidence. He would submit that the Court Commission report would infact resolve the controversy between the parties.

5. I have heard both the learned Counsels extensively. It is an undisputed position that the suit is at extremely premature stage of trial. Even the issues are not framed by the Trial Court. At this juncture, allowing an application under Order 26 Rule 9 of the CPC for appointment Court Commissioner to admeasure the land, preparing a map, etc would be unwarranted.

6. Considering the prayer in the suit, it appears that the suit itself is for direction and decree to fix the boundaries of the suit properties. In view of that no other words need that the object of filing the impugned application is to create the evidence. This is not certainly permissible by law. Needless to observe the plaintiffs or defendants as the case may be definitely can take recourse to the Order 29 Rule 9 of the CPC for the appropriate purpose and at an appropriate stage of the suit.

7. In the given circumstances, I am of the considered view that the application, being extreme premature ought not to have been considered by the Trial Court. So also considering the prayer in the suit, such application whenever to be decided, has to be decided very cautiously to see as to

whether it directly takes to allow the prayers in the suit. In view of this, the petition must succeed and is accordingly allowed.

8. The impugned order dated 13.12.2023 passed by the 3<sup>rd</sup> Jt. Civil Judge Junior Division, Osmanabad in Regular Civil Suit No.78 of 2023 below Exhibit 18 is quashed and set aside.

9. The parties, as observed supra may again take recourse to Order 26 Rule 9 of the CPC at appropriate time and in appropriate manner. All contentions kept open.

10. It is clarified that this order shall not influence any application if filed by any party under Order 26 Rule 9 of the CPC except as observed on the point of law.

11. Writ Petition stands disposed of accordingly.

**( AJIT B. KADETHANKAR, J. )**