



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO. 1370 OF 2026

Yamuna Ramchandra Jagtap

VERSUS

Shamrao Dagadu Rathod And Others

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Advocate for Petitioner : Mr. P.R. Nangare

CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 09, 2026

PER COURT :-

1. The petitioner is challenging the order dated 20.11.2025 passed below Exhibit-32 in R.C.S.No.473 of 2024 by the learned Civil Judge S.D. Majalgaon, District Beed.

2. The petitioner is defendant in RCS No.473 of 2024. Suit has been instituted by respondent seeking relief of perpetual injunction in respect of suit property, which is specified in plaint paragraph no.2. It is contention of respondent/plaintiff that he is in possession of suit property within the boundaries as specifically mentioned and he is cultivating land and taking certain crops. However, defendants are disturbing his possession.

3. Present petitioner/defendant appeared in the suit and filed written statement contending that boundaries given in plaint are incorrect and defendant has purchased the suit property. He is in possession of suit property. In this backdrop, petitioner filed application below Exhibit 32 seeking appointment of Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code contending that it is necessary to find out what type of crop is standing in the suit property. Aforesaid information would be necessary to adjudicate application for temporary injunction.

4. Trial Court declined to accept prayers of petitioner on the ground that appointment of Court commissioner would amount to permitting collection of evidence and application for temporary injunction can be decided on the basis of documents produced by parties in support of their contentions.

5. Mr. Nangare, learned advocate appearing for petitioner would submit that for deciding application for injunction, it was imperative to find out what crops are actually being taken over the suit property.

6. Considering submissions advanced and perusal of the reasons adopted by Trial Court, it is apparent that suit is instituted simplicitor for perpetual injunction and application for temporary injunction is also filed. The respondent/plaintiff is asserting his possession over suit property within specified boundaries. Defendant is disputing the same. Such a controversy will have to be decided on the basis of evidence to be lead by the parties. The question, who is in possession of the property cannot be ascertained by appointing Court commissioner. It is trite that such an appointment would amount to collection of evidence. The Trial Court has rightly relied upon the observations of this Court in WP no.9337 of 2011 (**Annasaheb Vasantrao Deshmukh and others Vs Tarachand Balabhau Rathod**).

7. In that view of the matter, this Court do not find any jurisdictional error requiring interference under Article 227 of the Constitution of India. Hence, writ petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

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