

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10591 OF 2025

Machhindra Gangaram Gadekar

VERSUS

The State Of Maharashtra And Others

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Advocate for the Petitioner : Mr. Ashraf Patel h/f Mr. Avhad Abhijeet
Padmakar

AGP for Respondent/State : Mr. S.D. Ghayal

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : FEBRUARY 02, 2026

PER COURT :-

1. Heard.
2. Present writ petition takes exception to order dated 18.02.2025 passed below Exhibit-62 in R.C.S. No.429 of 2018 by Civil Judge Senior Division, Vaijapur, whereby petitioner's application for appointment of Court Commissioner has been rejected.
3. The petitioner is a plaintiff in R.C.S. No.429 of 2018 pending before Civil Judge Senior Division, Vaijapur. The plaintiff has filed suit seeking decree of declaration of ownership and perpetual injunction in respect of suit property which is specified in para 1 of plaint. According to plaintiff, he is owner of 3 Acre 20 Gunthas of land out of Gat No.8 situated at Malisagaj, Taluka Vaijapur, District Aurangabad. The plaintiff has specified boundaries of land owned and possessed by him.
4. The respondents/defendants filed written statement and refuted plaintiff's claim. They have specifically disputed western side

boundary as given in plaint. In this backdrop, when plaintiff recorded his own evidence, he filed an application under Order XXVI Rule 9 of Civil Procedure Code seeking appointment of Commissioner to find out whether area stipulated in disputed sale deed no.4886 of 2018 does exist within boundaries mentioned therein and who is actual land owner to western side of suit property and prepare authentic measurement map showing boundaries of lands possessed by plaintiff and defendant no.1 and 2-A to 2-E. The Trial Court rejected application vide impugned order dated 21.06.2025 holding that appointment of Commissioner would amount to collection of evidence which is not permitted under law.

5. Learned advocate appearing for petitioner submits that defendants have raised dispute as regards to western side boundary, therefore, appointment of Commissioner is imperative to resolve dispute as to boundaries. Apparently, suit is instituted for relief of declaration of ownership and perpetual injunction. The plaintiff has specifically asserted his possession of suit land as per boundaries specified in plaint para 1. In this background, it is for plaintiff to establish ownership and possession over suit property. Although defendants have disputed western side boundary of plaintiff's land, that itself would not constitute dispute as to demarcation of boundaries between parties. The plaintiff has not sought relief like fixation of boundaries.

6. In this background, the Trial Court is justified in holding that no case is made out to exercise discretion under Order XXVI Rule 9 of Civil Procedure Code. The Trial Court has rightly appreciated the law laid down by this Court in various judgments referred in order to conclude that in facts of case, the appointment of Commissioner would amount to collection of evidence in respect of plaintiffs possession which is not permitted in exercise of jurisdiction under Order XXVI Rule 9 of Civil Procedure Code.

7. In result, no case is made out to exercise writ jurisdiction. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)