

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12473 OF 2025

Ravsaheb Uttamrao Jadhav And Others

VERSUS

Prabha Ganpati Kenkare Alias Prabha Pravin Pakalwad And Ors

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Advocate for the Petitioners : Mr. Bhosle Santosh C.

Advocate for Respondent Nos.2 to 4 : Mr. M.S. Shaikh h/f Mr. S.S.

Jangada

Advocate for Respondent No.1 : Mr. A.P. Deshmukh

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : FEBRUARY 24, 2026

PER COURT :-

1. Present petition takes exception to order dated 03.09.2025 passed below Exhibit-39 in R.C.S. No.96 of 2024, thereby directing appointment of Court Commissioner.
2. Learned advocate appearing for petitioners submits that before petitioners tendered their reply, order of appointment of Court Commissioner is passed. He invites attention of this Court to prayer in suit particularly prayer clause (C), whereby final prayer is made to appoint Superintendent of Land Records to measure suit land or entire Gat No.95 for fixation of boundaries. He would, therefore, urge that impugned order is passed at premature stage of suit and same amounts to granting final relief.
3. It is apparent that suit is instituted on 20.06.2024. The application Exhibit-39 was filed under Order XXVI Rule 9 of Civil

Procedure Code before framing of issues. Evidently, Trial Court exercised jurisdiction at premature stage.

4. In facts of present case, if plaintiff leads his evidence and on consideration of such evidence, if Court finds it necessary to appoint Court Commissioner, suitable orders can be passed.

5. In that view of matter, impugned order is quashed and set aside with liberty in favour of respondent/plaintiff to reiterate prayer for appointment of Court Commissioner after recording of his own evidence and bringing on record material warranting exercise of jurisdiction under Order XXVI Rule 9 of Civil Procedure Code.

6. Writ Petition stands allowed and disposed of in aforesaid terms.

(S.G. CHAPALGAONKAR, J.)