



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

47 WRIT PETITION NO. 13939 OF 2025

Vitthal Rambhau Patil And Others

VERSUS

Rajesh Shenu Wagh And Another

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Advocate for Petitioners : Mr. V.B. Patil

Advocate for Respondents 1,2 : Ms Nayana Patil h/f V.B. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 02, 2026

ORDER :-

1. Present writ petition takes exception to the order dated 25.9.2025 passed by learned Civil Judge J.D. Muktainagar, District Jalgaon below Exhibit-115 in R.C.S. No.36 of 2011, whereby application filed by respondent-plaintiff seeking appointment of the Court Commissioner has been allowed.

2. Respondent/plaintiff instituted suit for removal of encroachment and possession of the suit property. He relied upon measurement map dated 26.3.2010 to contend that defendants encroached upon the area within his ownership. Petitioners/defendants refuted plaintiffs claim by filing written statement. The Trial Court framed issues and recorded evidence of plaintiffs and his witness particularly, measurer,

however, during his evidence certain admissions are given that vitiates measurement report. Respondents/plaintiff filed application below Exhibit-115 seeking appointment of the Court Commissioner. Trial Court, after considering rival contentions observed that the question as to encroachment cannot be decided in absence of agreed measurement map. Trial Court relied upon observations of this Court in case of **Dipak Eknath Todkar Vs. Dr. Bhanuprakash Bapurao Kadam, reported in 2019 Nearlaw (Bombay HC Nagpur) online 2167.**

3. Apparently, from pleadings of the parties there appears serious dispute as to boundaries of respective holdings. Although, plaintiffs have relied upon evidence of PW-2-Gajanan Narwade/measurer, his evidence found inconclusive for decision as regards to disputed boundary. Apparently, aforesaid measurement would not be useful for Trial Court to reach definite conclusion. In this background, application was filed by plaintiffs for re-measurement of the land particularly, a joint measurement of gat no.60 owned by plaintiffs and gat no.56/1 and 56/2 of petitioners so as to conclusively resolve controversy between the parties which has been rightly allowed.

4. This Court do not find any reason to interfere in the conclusion drawn by Trial Court. The discretion exercised appears to be in tune with the object and scope of Order XXVI Rule 9 of the Civil Procedure code. In result, writ petition sans merit, hence **dismissed**.

(S. G. CHAPALGAONKAR, J.)

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