



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14259 OF 2025

Hemant Gokuldas Meher,
age 42 years, Occ. Agriculturist,
R/o Kharad, Tq. Ashti,
District Beed. Petitioner.

VERSUS

Rashmi Mahendra Kumar Patwan,
age 34 years, Occ. Nil,
R/o Kharad, Tq. Ashti, Dist. Beed. Respondent.

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Advocate for Petitioner : Mr. G.K. Naik Thigle
Advocate for Respondent : Mr. Anand Bhandari
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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : January 06, 2026.
Pronounced on : January 08, 2026.

FINAL ORDER :-

1. Present writ petition takes exception to the order dated 18th September, 2025 passed below Exhibit-273 in Regular Civil Suit no.86 of 2003 pending before the Civil Judge Junior Division Ashti, District Beed, whereby the petitioner's application for re-measurement of the suit property by the Court Commissioner and provide further particulars in the report has been rejected.

2. The petitioner is original plaintiff in Regular Civil Suit no.86 of 2003 instituted before the Civil Judge Junior Division at Ashti, District Beed seeking relief of declaration of ownership and perpetual injunction in respect of the suit property bearing survey number 200/A to the extent of 40R as specified in plaint in paragraph number-1. The petitioner filed an application below Exhibit-223 seeking appointment of the Court Commissioner. By an order dated 14th September, 2021, it was allowed and directions were given to the Deputy Superintendent of Land Records at Ashti to measure the suit property and fix the boundaries of 40R land of the plaintiff out of survey no.200. The Court Commissioner submitted his report in pursuance to his appointment. The parties proceeded further and recorded evidence. During proceeding of the suit, Court Commissioner has been examined on behalf of plaintiff as PW-3. He was cross examined on behalf of the defendant. At this stage, plaintiff find an application below Exhibit 273/D contending that during evidence, witness has stated that defendant obstructed him from fixing the boundaries.

3. In light of this admission, plaintiff sought further directions for re-measurement and fixing of boundaries of

plaintiff's land from survey number 200 and specify encroachment of the defendant on 16R portion of the plaintiff. The Trial Court, after considering rival submissions, observed that plaintiff has basically filed a suit for declaration and perpetual injunction and it is only for the plaintiff to prove that he is owner and possessor of the suit property. The Trial Court has further observed that plaintiff has not disputed report of the Court Commissioner till recording of his evidence and only because certain admissions are given by the Court Commissioner, present application is moved. The Trial Court has further observed that present suit is not for fixation of the boundaries and application is intended to delay the proceeding in the suit, which cannot be permitted.

4. Mr. Thigle, learned advocate appearing for the petitioner contends that Order XXVI Rule 10 of the Civil Procedure Code empowers the Court to issue directions, if the Court is not dissatisfied with proceeding of the Commissioner and may direct further inquiry to be made. In the present case, the Commissioner has not complied with the directions regarding fixation of boundaries of 40R land of the petitioner and therefore it was obligatory on the part of the Trial Court to

issue necessary directions by allowing the application filed by the petitioner below Exhibit 273.

5. Mr. Bhandari learned counsel appearing for the respondent supports the impugned order.

6. Having considered the rival submissions and on perusal of the material on record as well as measurement map of the Commissioner, which is placed at Exhibit-260, it can be observed that Commissioner has specifically depicted the survey boundaries as per original record. He has also specified boundaries of the land possessed by the respective landholders. The area in possession of the plaintiff is specifically marked in blue colour. The area in possession of the adjacent landholders is shown in red colour. It is therefore evident that the Court Commissioner has complied with the directions under order dated 14th September 2021. No defect is discernible in the measurement report. If during the course of evidence surveyor has given admissions which are inconsistent with the position shown in measurement map, the Court can appreciate veracity of such statement as compared to the measurement map which has been admitted in the evidence.

7. In that view of the matter, this Court do not find jurisdictional error in the impugned order. In the result Writ Petition stands **rejected**. No costs.

(S. G. CHAPALGAONKAR, J.)

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