



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 969 OF 2026

BHAGATSING MOHANSING KACHVAY THAKUR AND OTHERS
VERSUS
SHREE MAKARDHWAJ SHIKSHAN SANSTHA THROUGH SECRETARY

...

Mr. H. V. Tungar, Advocate for the Petitioners
Mr. D. J. Choudhari, Advocate for Respondents

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 24th FEBRUARY, 2026

P C. :-

1. The present Writ Petition takes exception to order dated 09.12.2025 passed by 5th Joint Civil Judge, Senior Division, Beed below Exhibit 46 in Regular Civil Suit No. 93 of 2020, whereby application filed by Respondent/plaintiff seeking appointment of Court Commissioner has been allowed.

2. The Respondent/plaintiff instituted suit seeking removal of encroachment, possession and perpetual injunction. The suit is at the stage of recording of evidence after framing of issues. Previously, plaintiff had filed an application seeking appointment of Court Commissioner, which was rejected by order dated 15.03.2023 and said order is also confirmed by this Court in Writ Petition No. 14174 of 2023 with liberty in favour of plaintiff to file application for appointment of Court Commissioner at appropriate stage. It is

further clarified that, if such an application is filed, Trial Court shall decide the same afresh in accordance with law, without being impeded by previous order.

3. In light of aforesaid factual backdrop, Respondent/plaintiff filed application below Exhibit 46 seeking appointment of Court Commissioner. The learned Judge of Trial Court allowed said application and directed to measure entire Gut No. 451 through Deputy Superintendent of Land Records for fixation of boundaries and demarcation of lands in possession of respective parties, depicting encroachment, if any.

4. Mr. Tungar, learned Advocate appearing for Petitioners raised twofold objection to impugned order. According to him, unless plaintiff records evidence, there is no occasion to appoint Court Commissioner, particularly when similar attempt was dislodged earlier by Court. Secondly, appointment of Court Commissioner would amount to permission to collect evidence. In support of his contention, Mr. Tungar heavily relies upon observations of this Court in case of *Shobha Sanjay Gadekar Versus Godavari w/o Pralhad Pimpale* reported in *LAWS(BOM) 2024 5 124* and observations of this Court in case of *Shantaram Dattatray Kekan Versus Bhausaheb Karbhari Kekan* reported in *LAWS (BOM) 2022 12 5*.

5. Per contra, Mr. Choudhari, learned Advocate appearing for

Respondent, would submit that, looking to the nature of suit, appointment of Court Commissioner and fixation of boundaries through the Competent Authority like T.I.L.R. would be essential. He relied upon observations of this Court in case of ***Pandit Vithal Landage Versus Vishnu Govind Pawar and Anr*** in ***Writ Petition No. 5158 of 2024, decided on 03.04.2025.***

6. Having considered submissions advanced and on perusal of reasoning adopted by Trial Court, it is discernible that suit is instituted for removal of encroachment. The dispute is about demarcation of lands or boundaries. In such case, fixation of boundaries through Competent Authority of land Records is necessary. The Trial Court would not be in position to decide in absence of admitted or authentic measurement map from Competent Authority. In present case, plaintiff is claiming that defendants have caused encroachment in front of his property and raised construction of sheds. It is therefore, necessary to ascertain whether such construction is within boundaries plaintiffs land property or construction is within defendants land.

7. In this factual backdrop, this Court finds that Trial Court is justified in exercising jurisdiction under Order 26 Rule 9 of Civil Procedure Code.

8. Although Mr. Tungar relied upon observations of this Court in

case of *Shantaram Dattatray Kekan* (supra), in that case application for appointment of Court Commissioner was made prior to decision on application for temporary injunction. The appointment of Court Commissioner was sought not only for fixation of boundaries but also to find out construction raised in lands. Hence, this Court disappeared order being premature stage. Similarly, in case of *Shobha Sanjay Gadekar* (supra), this Court was of the view that plaintiff has to produce preliminary evidence along with map and show encroachment and if Court is unable to reach conclusion on the basis of evidence produced the appointment of Court Commissioner can be raised. In present case, issues are already framed. The matter is at the stage of recording evidence. If Commissioner's report comes on record it would be in the interest of both parties to refer said report and lead necessary evidence, either to support or objects report.

9. In result, this Court finds no reason to interfere in impugned order in exercise of writ jurisdiction under Article 227 of Constitution of India, Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

ssp