



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

31 WRIT PETITION NO.1403 OF 2026

Shuabham Shivnath More,
age 26 years, Occ. Agril,
R/o Village Gavalidhanora,
Tal. Gangapur, Dist. Chhatrapati Sambhajanagar.
Petitioner.

VERSUS

Shivnath Sundarlal More
age 49 years, occ. Agri,
R/o Village Gavalidhanora,
Tq. Gangapur, Dist. Chhatrapati Sambhajanagar.
Respondent

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Advocate for Petitioner : Mr. N.N. Bhagwat
advocate for respondent : Mr. D.S. Patil
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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 09, 2026

JUDGMENT :-

1. Mr Patil, learned advocate waives notice for respondent.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
3. Present writ petition takes exception to the order dated 12.01.2026 passed by the learned Civil Judge Junior Division,

Gangapur, on Application Below Exhibit 13 in Regular Civil Suit No.785 of 2025.

4. The petitioner is plaintiff in R.C.S. No.785 of 2025 pending before learned Civil Judge J.D., Gangapur. The suit is instituted seeking relief of possession and perpetual injunction. The petitioner filed an application below Exhibit-13 seeking appointment of Court Commissioner contending that it is necessary to mark out encroached portion of 20R by fixing the boundaries through Deputy Superintendent of Land Records, Gangapur. Pertinently, respondent has given no objection for appointment of the Court Commissioner. However, Trial Court rejected application observing that plaintiff has other ways to prove his case and it is not necessary to measure land through Court Commissioner.

5. Learned advocate appearing for petitioner submits that considering the very nature of suit, it was a fit case to appoint Court Commissioner, however, Trial Court by giving a cryptic and irrational reasons rejected the application.

6. Having considered submissions advanced, it is apparent that, petitioner is seeking possession of 20R land, which has

been encroached by the defendant. The defendant is disputing the encroachment. Apparently, there is dispute as to the boundaries. In that view of the matter, if law laid down by the Supreme Court of India in case of **Haryana Waqf Board vs Shanti Sarup & Ors reported in (2008) 8 SCC 671** is considered, this is a fit case to appoint the Court commissioner. Civil Court has a discretion to appoint Court Commissioner, in case such appointment is necessary to resolve controversy between the parties. In case of dispute as to the boundaries, it is imperative to have admitted report of measurement through the competent authority. In the present case, such a recourse is warranted in light of very nature of the dispute between the parties. This Court finds that Trial Court has failed to exercise the jurisdiction vested in it in judicious manner.

7. In result, writ petition is allowed in terms of prayer clause 'B'.

8. The petitioner to deposit necessary charges for conducting measurement through Competent Authority.

9. The Court Commissioner/Competent Authority shall complete work within a period of **6** (six) weeks from the date

of deposit of the charges. Rule is made absolute in above terms. Writ petition stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

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