



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO. 2019 OF 2026

USHA RAMESH TAPSE AND OTHERS
VERSUS
MURLIDHAR LAXMAN TAPSE AND OTHERS

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Mr. M. D. Narwadkar, Advocate for the Petitioners

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 24th FEBRUARY, 2026

P. C. :-

1. The present Writ Petition takes exception to order dated 12.03.2025 passed below Exhibit 18 in Regular Civil Appeal No. 60 of 2023 pending before learned District Judge, Kaij.

2. The Petitioners are plaintiffs in R.C.S. No. 136 of 2003, which is instituted seeking relief of declaration of ownership and perpetual injunction in respect of suit property. Respondents/defendants contested suit by filing written statement. The Trial Court framed issues, thereby casting burden on Petitioners/plaintiffs to prove ownership and possession as claimed. After hearing parties, Trial Court dismissed suit vide judgment and decree dated 21.11.2014. Aggrieved Petitioners filed R.C.A. No. 06 of 2015 before District Judge. They filed an application under Order 26 Rule 9 of Civil Procedure Code seeking appointment of Court Commissioner, contending that Trial

Court doubted dimensions of suit property being refereed in hands and not in scale. However, Appellate Court rejected Petitioner's application vide impugned order dated 12.03.2025.

3. Mr. Narwadkar, learned Advocate appearing for Petitioners would submit that since Trial Court observed that measurement of property cannot be established because of its vague description, it was imperative to appoint Court Commissioner for bringing correct dimensions before the Court. Hence, exercise of jurisdiction under Order 26 Rule 9 of Code of Civil Procedure was necessary in facts of this case. In support of his contentions, he relies upon observations of this Court in case of *Vasant Tukaram Prabhu Versus Xalinibai Borcar alias Shalinibai Borkar (expired) Rep. By her LR's & Anr.*, reported in *2014(5) Mah.L.J. 382*.

4. Having considered submissions advanced, it can be observed that Petitioners/plaintiffs specifically pleaded in plaint that they are owners and possessors of suit property as described in plaint para No.2. Accordingly, Trial Court framed issue in suit "whether plaintiffs prove ownership and possession over suit property on the basis of sale deed dated 31.12.1998". The Trial Court concluded that plaintiffs failed to prove their ownership as well as possession. As such point for reconsideration before Appellate Court is regarding concreteness of aforesaid finding. Apparently, this is not a case of

boundary dispute. There is no claim for removal of encroachment. The Appellate Court has rightly observed that measurement of suit property is not fact in issue. The defendants have denied the ownership as well as possession of plaintiffs over suit property. Looking to the nature of the pleadings and controversy in the suit, appointment of Court Commissioner was absolutely not necessary.

5. Although Mr. Narwadkar relies upon observations of this Court in case *Vasant Tukaram Prabhu* (supra) on consideration of factual matrix in that case, it is evident that it was case of dispute as regards to identity of boundaries and therefore, investigation for determining boundaries was warranted. The present case is clearly distinguishable from case cited.

6. In that view of matter, no jurisdictional error can be found in impugned order. In result, Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

ssp