

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2607 OF 2026

Keshav Shankar Mudgade

VERSUS

Balaji Pandurang Shinde And Others

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Advocate for the Petitioner : Mr. Shinde Manoj Dharmaraj

Advocate for Respondent No.1 : Mr. B.R. Survase

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 11, 2026

PER COURT :-

1. Present petition takes exception to order dated 05.01.2026 passed by 2nd Joint Civil Judge Junior Division, Ausa, District Latur below Exhibit-6 in R.C.S. No.37 of 2025, whereby the application submitted by respondent no.1/plaintiff for appointment of Court Commissioner is allowed.

2. Mr. Manoj Shinde, learned advocate appearing for petitioner would submit that plaintiff has filed an application for appointment of Court Commissioner along with suit. The issues are yet to be framed. The parties are yet to lead evidence and at this premature stage, the Trial Court allowed the application. In this way permitted collection of evidence which is contrary to law. In support of his contention, he relies upon observations of this Court in case of *Shantaram Dattatray Kekan and Ors Vs. Bhausaheb Karbhari Kekan and Anr* reported in *2023 (1) ABR 554*.

3. Mr. Surwase, learned advocate appearing for respondent no.1/plaintiff supports impugned order.

4. Having considered submissions advanced, it can be observed that plaintiff has specifically averred in plaint that land of defendant no.3 is situated at northern side of his land. It is contention of plaintiff that defendant no.3 has encroached upon 10 R land owned by plaintiff. The petitioner/defendant appeared in suit. It is not disputed that land of plaintiff is adjacent to land of petitioner situated at northern side. Apparently, there is serious dispute as to boundaries. In this backdrop, the Trial Court found it necessary to appoint Court Commissioner for joint measurement of the land.

5. Although, Mr. Shinde has relied upon observations of this Court in case of **Shantaram Dattatray Kekan** (supra) which is distinguishable on facts. In that case, appointment of Commissioner was not approved before leading of evidence for two reasons. Firstly, in that suit, defence of *res judicata* was raised and plaintiff had not stepped into witness box. Secondly, final relief claimed in suit was for fixation of boundaries. Such is not the case in hand. In this case, there is dispute as to boundaries. The suit is filed for removal of encroachment. In this backdrop, unless there is joint measurement map by competent authority, the Court would not be in a position to decide controversy between the parties.

6. Needless to state here that, Court Commissioner's report would be subject to objection to be raised by petitioner and cross-examination of Commissioner.

7. In that view of matter, there is no merit in writ petition. Writ Petition stands rejected.

(S.G. CHAPALGAONKAR, J.)