



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 3741 OF 2026

Dattu Savaleram Kudnar

VERSUS

The Range Forest Officer And Others

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Advocate for Petitioner : Mr. A.T. Kanawade

AGP for Respondents: Mr. S.D. Ghayal

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : April 08, 2026

ORDER :-

1. Present writ petition takes exception to the order dated 6.2.2026 passed by the learned Civil Judge Senior Division, at Sangamner, District Ahmednagar below Exhibit-29 in R.C.S. no.109 of 2022.

2. The petitioner filed R.C.S. No.109 of 2022 seeking relief of declaration and injunction. In short, petitioner claims declaration that he acquired ownership of suit property by way of adverse possession. Petitioner completed his evidence and at the fag end filed an application seeking appointment of the Court Commissioner. His earlier application below Exhibit-15 for similar relief was already rejected.

3. In present application, petitioner averred that petitioner has carried development in the suit property and it is necessary to bring on record such developments so as to establish his possession. The Trial Court, after considering rival contentions and evidence on record, observed that application is filed for the purpose of collecting evidence. Similar prayer of the applicant was earlier rejected.

4. Although, applicant was given liberty to move after recording of the evidence as per order passed by this Court, nature of prayers in application clearly shows that applicant wants to bring on record the evidence through the Commissioner. It is well settled that party cannot be permitted to collect the evidence through the Court Commissioner. Since, petitioner claims his title by way of adverse possession, it is for him to prove his continuous undisturbed possession as owner on the suit property. For the purpose of deciding said issue appointment of Court Commissioner, particularly, for the purposes set out in application is absolutely uncalled for. The Trial Court has rightly refused to exercise the jurisdiction under Order 26 Rule 9 of Civil Procedure Code in the facts of the case.

5. Hence, writ petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

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