



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

WRIT PETITION NO. 3872 OF 2026

ASHISH SHRINIWAS ZANWAR
VERSUS
MOHD. NAWAZ MOHD. ASHRAF

...
Mr. Namit Sunil Muthiyan, Advocate for the Petitioner.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th APRIL, 2026.

P.C.:-

1. The petitioner raises challenge to order dated 18.12.2025 passed below Exhibit-130 by Civil Judge Senior Division at Aurangabad in Regular Civil Suit No.1740/2012, whereby his application for appointment of Court Commissioner has been rejected.
2. The petitioner is defendant in suit instituted by respondent for relief of perpetual injunction in respect of suit property. The petitioner filed his written statement and disputed location, boundaries and possession of plaintiff. The Trial Court framed issues based on pleadings of parties and burden to prove possession and title is cast upon plaintiff. Now plaintiff has recorded his evidence and matter is posted for evidence of petitioner/defendant.
3. At this stage, petitioner filed application under Order 26 Rule 9 of Code of Civil Procedure seeking appointment of Court Commissioner contending that spot verification and inspection

would be necessary to decide controversy between parties and there would be no prejudice to respondent. The Trial Court declined to entertain petitioner's application observing that burden is cast upon plaintiff only and it is for plaintiff to prove his case based on his evidence. No burden is cast upon defendant to prove particular issue. The Court further observed that appointment of Court Commissioner would amount to collection of evidence.

4. This Court finds that present suit is not for recovery of possession of encroached area or fixation of boundaries. The plaintiff is clearly coming with case of his possession over suit property, whereas petitioner/defendant has seriously disputed same. In case, plaintiff fails to prove his possession over suit property as described in plaint, suit would fail. Therefore, appointment of Court Commissioner that too at the stage of recording of evidence of defendant was absolutely unnecessary. The Trial Court has rightly refused to entertain prayer for appointment of Court Commissioner, particularly when it is not discernible that such appointment would aid Court in final adjudication of *lis* between parties.

5. In result, Writ Petition being devoid of merit, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE