

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1857 OF 2026

SANGRAM BHAGWATRAO RANWARE AND ANOTHER
VERSUS
MARUTI EKNATH KHULE AND OTHERS

...

Advocate for Petitioners : Mr. Umakant V. Waghmare.
Mr. Milind Deshmukh, Mr. Vishwajit Nalawade

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 28-04-2026

PER COURT:-

1. The Petitioners have raised an exception to the order dated 07.11.2025 below Exhibit-62 rendered by the learned Civil Judge Junior Division, Malshiras in Regular Civil Suit No.872/2022, thereby rejecting the application for appointment of Court Commissioner.

2. The petitioners are the original plaintiffs in Regular Civil Suit No.872 of 2022 before the Civil Court, seeking rectification of a sale deed and a perpetual injunction against the defendants/respondents. During the pendency of the suit, the plaintiffs presented an application (below Exhibit-62) under Order XXVI, Rule 9 of the Code of Civil Procedure (CPC) for the appointment of a Court Commissioner to determine and report on the actual possession of the suit property, specifically Gat No. 292.

3. The Trial Court rejected the application, observing that a Court Commissioner cannot be appointed to gather evidence or to establish the factum of possession on behalf of a party. Aggrieved by this order, the petitioners have approached this Court.

4. The learned counsel for the petitioners submits that the impugned order is unsustainable in law. It is contended that the present suit involves a boundary dispute, necessitating the appointment of a surveyor in order to clarify and ascertain the exact location of the disputed structures. The counsel further argues that the Trial Court failed to consider the available evidence and overlooked that a map measurement is essential to determine whether the structures in question fall within Gat No. 212 or Gat No. 213. Such a report is crucial to assist the Court in adjudicating the prayer for rectification of the sale deed. Consequently, the petitioners pray that the petition be allowed and the Trial Court's order be set aside

5. Having heard the learned counsel for the petitioners and perused the material on record. The primary grievance of the petitioners is to ascertain the actual possession of the suit property. Such a factual determination must be established through oral and documentary evidence during the trial.

6. Under Order XXVI Rule 9 of the CPC, the object of a appointment of Court commissioner is not to assist a party to collect evidence but to clarify a matter in dispute based on evidence already on record. In the present case, the prayer to identify possession through a Commissioner amounts to collection of an impermissible evidence, which is impermissible.

7. Thus, The trial court has rightly exercised its discretion in holding that the appointment of a Commissioner at this stage would be premature and would serve only to collect evidence for the plaintiffs.

8. In view of the above, there is no jurisdictional error or patent illegality in the order under challenge.

9. The writ petition, being devoid of merits, stands dismissed.
No order as to costs.

[SACHIN S. DESHMUKH]
JUDGE

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