

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8872 OF 2024

Haribhau Ramchandra Punde & Anr

...Petitioners

Versus

Shamrao Maruti Shinde & Anr

...Respondents

Mr. Vaibhav Gaikwad, i/b Shriram Choudhari, for the Petitioners.

Appearance not received for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : February 25, 2026

ORDER :

1. A challenge in this Petition is to an order dated November 21, 2023 ("*Impugned Order*") by which the Civil Judge Junior Division, Indapur, has refused to have a commissioner appointed to take measurements which would form evidence for purposes of adjudicating a suit alleging encroachment. The Impugned Order proceeds on the footing that in a Suit for injunction, the question as to who is in possession is a matter to be decided on the basis of evidence either oral or documentary, to be adduced by the parties and that such function cannot be delegated to a commissioner.

2. On the contrary, it is apparent that the Application made by the Petitioner is essentially for measurements, which would enable the

Court to be presented with documentary evidence which would help it in adjudicating the Suit.

3. Despite service, none appears for the Respondent. A Learned Single Judge of this Court had already granted ad-interim relief in the form of a stay on the further proceedings in the Suit pending the disposal of this Petition.

4. Having heard the advocate for the Petitioner, the appointment of a Court Commissioner is indeed a relevant and valid prayer that has been made. The grounds on which such prayer has been rejected are unreasonable and arbitrary. Therefore, the Impugned Order is hereby quashed and set aside. The Learned Judge is directed to have a Court Commissioner appointed to have the measurements conducted and to file a report after which the adjudication of the Suit may proceed. Let such measurements be done within a period of four weeks from the date of upload of this order on the website of this Court.

5. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]