



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1576 OF 2026**

Nitin Baban Gadhve and Anr.	...	Petitioners
versus		
Maruti Pandurang Koudare	...	Respondent

Mr. Sudhir Sadavarte, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 25 FEBRUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioners.
2. The challenge in this Petition is to an order dated 3 December 2025 passed by the learned Civil Judge, Rajgurunagar – Khed, whereby the application preferred by the Plaintiff to appoint the Court Commissioner, to measure the suit properties came to be allowed.
3. The Respondent – Plaintiff has instituted a suit with the assertion that the Petitioners – Defendants have gradually committed encroachment over a portion of the suit properties to the extent of 6 Are, as described in para 1B of the plaint. The Petitioners resisted the suit by filing a written statement, controverting the allegations of encroachment.
4. The Plaintiff filed an application for appointment of the Court Commissioner. The Petitioners resisted the said application.
5. By the impugned order, the learned Civil Judge was persuaded to allow

the application opining that, in the light of the nature of the dispute, a joint measurement of the lands of the Plaintiff and Defendants was necessary for arriving at a just decision of the case. It was, inter alia, observed that without assistance of the Court Commissioner, the actual situation of encroachment and its extent cannot be ascertained.

6. Mr. Sadavarte, learned Counsel for the Petitioners, submitted that the learned Civil Judge committed a grave error in appointing the Court Commissioner, especially at this stage when the Plaintiff is yet to adduce his evidence. Appointment of the Court Commissioner would, in the circumstances of the case, be an exercise of collection of evidence. If the Plaintiff adduces evidence and brings material on record to substantiate his case, then the trial Court would be justified in appointing the Court Commissioner to resolve the matter in controversy. It was submitted that, from the perusal of the prayer in the plaint, it becomes evident that the Plaintiff is seeking removal of encroachment, if any. In such circumstances, the Court Commissioner could not have been appointed.

7. Reliance was placed on the judgment of a learned Single Judge of this Court in the case of **Shantaram Dattatray Kekan and Ors. V/s. Bhausahab Karbhari Kekan and Anr.**¹, wherein it was enunciated that when the Plaintiffs were yet to adduce their evidence, the appointment of the Court

1 WP No.14046 of 2021 dated 5 Dec. 2022

Commissioner would amount to grant of prayer clause (c) in the plaint for measurement of the suit property and fixation of boundaries.

8. I have perused the averments in the plaint. Survey No.69/1A admeasured 65 Are. A Gift Deed was executed by the Plaintiff in favour of the predecessor-in-title of the Defendants on 2 February 2025, under which an area admeasuring 30.5 Are out of the said Survey No.69/1A was gifted to the predecessor-in-title of the Defendants. It is the case of the Plaintiff that, as the boundaries of the suit land which have been carved out of Survey No.69/1A were not fixed, the Defendants have gradually committed encroachment over the lands described in para 1B of the plaint to the extent of 6 Are.

9. It is true, the prayers in the plaint are inarticulately drafted. However, from the reading of the plaint as a whole, it becomes abundantly clear that it is the case of alleged encroachment and the prayer for removal of encroachment. Learned Civil Judge was, thus, justified in observing that, when the dispute is in relation to an encroachment over the portion of the suit properties, a joint measurement of both the properties is indispensable.

10. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Haryana Waqf Board V/s. Shanti Sarup and Ors.**².

² (2008) 8 SCC 611

11. Reliance placed by Mr. Sadavarte on the judgment in the case of **Shantaram Dattatray Kekan and Ors. (supra)**, does not advance the cause of the submission on behalf of the Petitioners, as the said decision was rendered in a different fact-situation. In the said case, there was a specific prayer in the plaint for measurement of the suit property and fixation of boundaries.

12. In any event, in view of the provisions contained in Section 75 of the Code of Civil Procedure, 1908 and Order XXVI Rule 9 of the Code, 1908, it cannot be laid down as an immutable rule of law that the Court Commissioner cannot be appointed prior to the parties adducing evidence. In the facts of the case at hand, and, especially having regard to the nature of the dispute, the exercise of the discretion by the learned Civil Judge cannot be faulted at. The Writ Petition, thus, does not deserve to be entertained.

13. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)