

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

WRIT PETITION NO. 10558 OF 2025

Sampat Vishnu Bandal

...Petitioner

Versus

Dinkar Bhiku Bardade And Others

...Respondents

**WITH
INTERIM APPLICATION NO. 8100 OF 2025
IN
WRIT PETITION NO. 10558 OF 2025**

SANTOSH
SUBHASH
KULKARNI

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Mr. Nikhilesh Pote, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 7th October, 2024 passed by the learned Civil Judge, whereby the Deputy Superintendent, Land Records Department, has been appointed to measure the property bearing No.168 and the land bearing Gat No.136.
3. The petitioner has instituted a suit for declaration, perpetual injunction and removal of encroachment. The learned Civil Judge was persuaded to appoint Court Commissioner as the defendant has denied the existence of the suit property 1A and claimed that, the suit property 1B was part of Gat No.136.

Therefore, to elucidate the matter in dispute, the appointment of Court Commissioner was considered necessary.

4. Mr. Pote, the learned Counsel for the petitioner, submitted that while deciding the application for temporary injunction the trial Court had recorded clear and explicit finding in favour of the petitioner. Attention of the Court was invited to the observations in paragraphs 11 and 13 of the order whereby the application for temporary injunction was partly allowed and the defendant has been restrained from causing obstruction to the possession and enjoyment of the applicant over the suit property 1A. It was submitted that the appointment of the Court Commissioner, in the circumstances of the case, was sought for collection of evidence.

5. From the perusal of the averments in the plaint, it becomes evident that the plaintiff has alleged encroachment is at the hands of the defendant. Where the aspect of encroachment at the heart of the controversy, the measurement of the properties by the Cadestral Surveyor is indispensable to arrive at a justifiable finding. In the case at hand, since the plaintiff asserts an encroachment at the hands of the defendant and the defendant denies the very existence of the property 1A and claimed that the property 1B is part of Gat No.136, the

exercise of discretion by the trial Court to appoint the Court Commissioner can be faulted at.

6. In the case of *Haryana Waqf Board vs. Shanti Sarup*¹ the Supreme Court has emphasised that in the case of demarcation of the disputed land it is appropriate for the Court to direct the investigation by appointing a local Commissioner as provided under Order XXVI Rule 9 of the Code of Civil Procedure.

7. The appointment of Court Commissioner, in the facts of the case would assist the Court in arriving at a just decision of the Court. Thus, in exercise of the supervisory jurisdiction, this Court does not find any infirmity in the impugned order.

8. The petition stands disposed.

9. The learned Counsel for the petitioner submits that the Court Commissioner has yet not been executed and four weeks time be granted to approach the Supreme Court.

10. In the event the Court Commission has yet not been executed, the same shall not be executed for the period of four weeks from today.

11. In view of disposal of the petition, IA/8100/2025 also stands disposed.

[N. J. JAMADAR, J.]

1 (2008) 8 SCC 671.