

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

WRIT PETITION NO.17705 OF 2025

Arvind Balu Wagh	...	Petitioner
versus		
Janardhan Maruti Pokharkar and Ors.	...	Respondents

Mr. Ronak Utagikar, for Petitioner.

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CORAM: N.J.JAMADAR, J.

DATE : 27 JANUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 3 November 2025, whereby the application preferred by the Petitioner – original Defendant No.1 – Plaintiff in the Counter-claim, to appoint TILR as the Court Commissioner to measure the suit lands came to be rejected.
3. Plaintiffs – Respondent Nos.1 and 2 have instituted a suit against the Petitioner – original Defendant No.1 and Respondent Nos.3 to 9- original Defendant Nos.3 to 9, for a decree of injunction to perpetually restrain Defendant No.1 from causing obstruction to the peaceful possession of the plaintiffs and defendant Nos.2 to 9 over land bearing Gat No.750/2 (the suit property) and dispossessing the Plaintiffs and Defendant Nos.3 to 9 from a portion of the suit property, without due process of law.

4. In the said suit, Defendant No.1 filed a counter-claim and alleged that the Plaintiffs and Defendant Nos.3 to 9 have committed encroachment over 2 Are land out of the land bearing Gat No.755, and, thus, a decree of removal of encroachment and delivery of possession of the suit property described in paragraph 1(b) of the Counter Claim be passed.

5. Defendant No.1 specifically claimed that the said encroachment was revealed in the measurement i.e. MR No.2968 of 2014 carried out at the instance of Defendants to Counter-claim, and MR No.526 of 2023 carried out at the instance of the Petitioner. The Defendant No.1 preferred the instant application for appointment of the Court Commissioner asserting that, a joint measurement of land bearing Gat Nos.750 and 755 was necessary to determine the question of alleged encroachment.

6. By the impugned order, the learned Civil Judge rejected the application observing that the measurement map vide MR No.526 of 2023 relied upon by the Petitioner was already on record and that was the foundation of the Counter-claim. Therefore, the appointment of another Commissioner, at that stage, was not warranted.

7. Learned Counsel for the Petitioner submitted that, in view of the allegations of encroachment, a joint measurement of both the lands is necessary. Thus, the learned Civil Judge could not have rejected the application for appointment of the Court Commissioner. Reliance was placed

on a judgment of learned Single Judge of this Court in the case of **Sahebrao s/o Rama Yadav and Ors. V/s. Sarjerao s/o Rama Yadav**¹.

8. In the case at hand, it must be noted that the measurement carried out vide MR No.526 of 2023 is the basis of the Counter-claim of the Defendant No.1 – Petitioner that the original Plaintiff has committed encroachment over the Petitioner's land. The parties have yet not led evidence. At this stage, the appointment of the Court Commissioner would amount to collection of evidence. In the event the parties, including the Defendant No.1, adduce evidence and the cadastral surveyor, who has carried out measurement vide MR No.526 of 2023 is examined as witness before the Court and the Court finds that the appointment of the Court Commissioner is necessary to elucidate the matter in controversy, at that stage, the Court would be justified in exercising the power under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

9. Learned Civil Judge has, thus, taken a correct view of the matter. Thus, keeping open the option to file a fresh application for appointment of the Court Commissioner, after the Petitioner – Defendant No.1 adduces evidence in proof of the measurement vide MR No.526 of 2023, the Writ Petition stands disposed.

10. In the event such an application is filed, the trial Court shall decide the

¹ 2014(6) Mh.L.J. 553

same on its own merits and in accordance with law, without being influenced by the observations in the impugned order.

(N.J.JAMADAR, J.)