

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2349 OF 2026

Nilam Shivaji Sherakar

...Petitioner

Versus

Manik Govind Wagh and ors.

...Respondents

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
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Mr. Bhalchandra Shinde, for the Petitioner.

Mr. Rupesh Zade, for Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 7th MARCH, 2026

Order:-

1. This petition under Article 227 of the Constitution of India assails an order dated 6th October, 2023 passed by the learned Civil Judge, Indapur, thereby appointing Deputy Superintendent, Land Records, Indapur, to measure the land bearing Gat No.299/1/A/1/B (the suit land), prepare a map and submit a report to the Court, and another order dated 23rd January, 2026, whereby the learned Judge has directed the police to provide necessary aid to the Deputy Superintendent, Land Records, to execute the commission.

2. Mr. Shinde, the learned Counsel for the petitioner, submitted that the suit has been instituted for a decree of perpetual injunction to restrain defendant Nos.1 to 5 from

causing obstruction to the possession and cultivation of the plaintiff over the suit property. Therefore, the learned Civil Judge could not have appointed the Court Commissioner as the exercise would partake the character of collection of evidence.

3. From the perusal of the impugned order, it becomes evident that though the suit has been instituted for perpetual injunction yet the essential dispute between the parties is over the boundaries and demarcation of their respective lands. The trial Court noted that in the written statement filed on behalf of defendant Nos.1 to 4 itself, the necessity of measurement of the suit land has been adverted to. Likewise, while deciding Misc. Civil Appeal No.89/2019, the learned District Judge has observed that the measurement of the entire Gat No.299/1/A/1/B was necessary as the dispute between the parties was in respect of the boundaries of their respective lands.

4. It is not the case that the appointment of the Court Commissioner was sought at an initial stage. The suit came to be instituted in the year 2018. The necessity of the measurement is highlighted by the defendants as well as in the order passed by the learned District Judge.

5. In these circumstances, when the joint measurement of the entire block (Gat) is found necessary to adjudicate the dispute as to the boundaries; such exercise of discretion by the trial Court cannot be faulted at. The appointment of the Court Commissioner to measure the entire block (Gat) appears to be necessary to elucidate the matter in controversy and equip the Court to arrive at a just decision.

6. A useful reference in this context can be made to a judgment of Supreme Court in the case of *Haryana Waqf Board vs. Shanti Sarup*¹ wherein 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. Resultantly, in exercise of the supervisory jurisdiction, this Court does not find any legal infirmity in the impugned order.

8. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]

¹ (2008) 8 SCC 671.