

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2471 OF 2026

Santosh Bapurao Malusare

...Petitioner

Versus

The State Of Maharashtra Through
Secretary and ors.

...Respondents

Mr. B. A. Lawate, for the Petitioner.

Mr. A. C. Bhadang, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 24th MARCH, 2026

Order:-

1. Heard Mr. Lawate, the learned Counsel for the petitioner.

2. The challenge in this petition is to an order dated 14th November, 2025 passed by the learned Civil Judge, Baramati, whereby the application preferred by the petitioner – plaintiff to appoint a Cadestal Surveyor as a Court Commissioner to measure the suit land, came to be rejected.

3. The petitioner – plaintiff claims to be the holder of the land bearing Gat No.34/1 situated at Tandulwadi, Taluka Baramati. The land bearing Gat No.100 is situated on the eastern side of Gat No.34/1. The plaintiff is in possession and cultivation of an area admeasuring 2.62 H. out of the said Gat No.100. Range Forest Officer (D1) has no concern with the said land. Yet, the

defendant No.1 in connivance with defendant Nos.3 and 4, the officers of Land Records Department, have got measured the said land bearing Gat No.100 and on the basis of the report of measurement the defendants were threatening to cause obstruction to the possession and cultivation of the plaintiff over the land on the eastern side of Gat No.34/1. Hence, the plaintiff – petitioner instituted the suit to restrain defendant No.1 from causing obstruction to the possession of the plaintiff over the land on the eastern side of Gat No.34/1, carry out any construction thereon or encroach upon the said land.

4. In the said suit, the plaintiff sought appointment of the Cadestal Surveyor to measure the subject lands on the basis of the documents and old record as the measurement carried out vide MR No.248/2021 and report thereof were not in accordance with the actual situation at the suit site. The plaintiff also asserted that the plaintiff had caused the measurement vide MR No.282/2018.

5. The learned Civil Judge rejected the applications observing, *inter alia*, that the plaintiff has instituted suit for perpetual injunction simpliciter. It was not the case of the plaintiff that defendant Nos.1 and 2 had committed encroachment over a particular portion of the suit property. Nor

the plaintiff was seeking removal of encroachment and recovery of possession of the encroached portion of the suit land. Moreover, the averments in the applications (Exhibits-32 and 37) were contradictory, obscure and vague. Thus on the basis of such assertions, Court Commissioner cannot be appointed.

6. Mr. Lawate, the learned Counsel for the petitioner, submitted that the appointment of the Court Commissioner was necessary for the determination of real questions in controversy between the parties. The essential dispute between the parties was over the demarcation of the boundaries. And in such a situation, joint measurement of the lands was necessary to resolve the controversy.

7. I have perused the averments in the plaint and the applications for the appointment of the Court Commissioner (Exhibits-32 and 37). *Prima facie* it appears that the plaintiff does not claim ownership over the land bearing Gat No.100. In paragraph 1 of the plaint, the plaintiff has described the suit land as the land bearing Gat N0.100, which is situated on the eastern side of the plaintiff's land bearing Gat No.34/1. The said land bearing Gat No.100 is a reserved forest. The plaintiff claims that, the plaintiff has been in cultivation and possession of an area admeasuring 2.62 H over the said Gat No.100, since last 50

to 60 years. As defendant Nos.1 and 2 threatened to encroach over the land of the plaintiff bearing Gat No.34/1 also, on the ground that the entire area of Gat No.100 was not forthcoming, the plaintiff instituted the suit for perpetual injunction.

8. In this backdrop, the view of the learned Magistrate that the plaintiff has not alleged encroachment at the hands of defendant Nos.1 and 2 and sought removal of encroachment and recovery of a possession of a particular portion of the suit land, assumes significance. From the perusal of the applications, it becomes abundantly clear that two measurements have already been carried out. First, at the instance of the plaintiff vide MR No.282/2018. Second, vide MR No.248/2021. It seems to be the grievance of the plaintiff that the boundaries vide MR No.248/2021 have been wrongly fixed by the Officers of the Land Records Department in connivance with the Officers of the Forest Department.

9. The plaintiff has yet not led evidence. Thus, at this juncture, the appointment of the Court Commissioner to again measure the suit land appears wholly unwarranted. If the plaintiff adduces evidence and, upon examination of the Cadestral Surveyors, who have carried out the measurement vide MR No.282/2018 and MR No.248/2021, the trial court finds

that appointment of a Court Commissioner is necessary to elucidate the matter further, at that stage, the Court would be justified in appointing the Superintendent of Land Records or any other competent officer to carry out measurement.

10. In the aforesaid view of the matter, at this juncture, no interference is warranted with the impugned order.

11. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]