



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 460 OF 2025

Ajay Vasantaoji Zade, Aged 39 years, Occ: Business,
R/o Samadhi Ward No.1, Chandrapur, Tah. & Dist.Chandrapur.

PETITIONER

VERSUS

1. Baban Vithobaji Asutkar, Aged 55 years, Occ:Agricultural.
2. Balkrushna Harbaji Asutkar, Aged 50 years, Occ: Agricultural.

Both R/o Borda, Post Ekajurna, Near Zilla Parishad School,
Borda, Tahsil Warora, District Chandrapur.

RESPONDENTS

Shri A.M. Chandekar, counsel for the petitioner.
Shri Rohan Bhishikar with Shri N.R. Bhishikar, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 03, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner challenges the order passed by the trial Court rejecting the application for examination of the Court Commissioner through video conferencing. This petition relates to challenge to an order dated 07.11.2024 passed by the trial Court in Regular Civil Suit No.54 of 2016. It has to be noted that there are four other petitions filed by the petitioner dealing with similar challenge.

3. The controversy arises out of the suit for removal of encroachment filed by the petitioner/plaintiff in which evidence on affidavit of the private surveyor was filed by him. In view of the old age of the private surveyor Shri Ramchandra Indapawar, the application for examining the said witness by appointing the Court Commissioner was rejected and

thereafter the plaintiff filed a separate application and sought permission to adduce evidence of the said surveyor through video conferencing, which came to be rejected by the impugned order. The petitioner has challenged the said order by way of present writ petitions.

4. The learned counsel for the petitioner submitted that the plaintiff is entitled for an opportunity to lead evidence to prove its case and rejecting the application even to examine the surveyor through video conferencing amounts to denial of the opportunity to the plaintiff. He submitted that the defendants are entitled to cross-examine the surveyor and hence no prejudice would be caused to the defendant, if the application is allowed.

Opposing the petition, the learned counsel for the respondents submitted that the insistence to examine the said witness is an attempt to prolong the suit and thus supported the impugned order.

5. While considering the rival contentions of the parties, it has to be seen that the plaintiff's suit is for removal of encroachment and in support of his case, evidence of affidavit of the private surveyor Shri Ramchandra Indapawar is already filed on record. Although the application for leading evidence of the said surveyor through Court Commissioner was rejected, the fact remains that the said witness is not examined. There is no dispute that the said surveyor is an old aged person of 89 years of age suffering from some health issues and the said fact is not disputed on record. The examination of this witness is necessary and denying an opportunity to the

plaintiff to examine the said witness to prove the plaint map would cause detriment to the rights of the plaintiff. A perusal of the impugned order shows that the trial Court has observed that since the other witness, who is surveyor of land records is already examined, evidence of Shri Ramchandra Indapawar is unnecessary. Although the respondents attempted to justify the impugned order, I do not agree with the contentions canvassed on behalf of the respondents that the evidence of this witness is an attempt to prolong the litigation. Having regard to the controversy involved in the suit, an opportunity needs to be granted to the plaintiff to examine the said surveyor to prove the plaint map. The application submitted by the plaintiff for examining Shri Ramchandra Indapawar through video conferencing therefore deserves to be allowed. Pertinent to note, the defendant would be entitled to cross-examine the said witness and thus no prejudice would be caused to him.

6. Having regard to the factual and legal aspects involved in the matter, I am of the firm opinion that denying an opportunity to the plaintiff to examine the said witness through video conferencing would result into denying an opportunity to the plaintiff to lead evidence. The impugned order passed by the trial Court therefore needs indulgence. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The order dated 07.11.2024 passed by the trial Court on the application at Exhibit 48 in Regular Civil Suit No.54 of 2016 is quashed and set aside.

- III. The application filed by the plaintiff in Regular Civil Suit No.54 of 2016 at Exhibit 48 for examination of the Court Commissioner through video conferencing is allowed.
- IV. It is directed that the plaintiff should record the evidence through video conferencing without seeking unnecessary adjournments.
- 7. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE