



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.864 OF 2025

Vasudeo Anandrao Pawar & Ors. **Vs.** Ashok Pandurang Adhau & Ors.

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. F.I. Abid, Advocate for the Petitioners.

Ms. K.H. Bhondge, AGP for the Respondent No.11/State.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATED : 27th FEBRUARY, 2026

1. Heard learned counsel for the petitioners.
2. Petitioners' challenge is to the Order dated 20.09.2024 passed by the trial Court thereby, rejecting the application for appointment of Court Commissioner.
3. Learned counsel for the petitioners submits that in the suit filed for possession and damages by the petitioners-plaintiffs, a Court Commissioner was earlier appointed by Order dated 14.10.2022 for measurement of the suit property. Although the Commissioner carried out the measurement and submitted its report, there was a need for re-measurement and even after re-measurement, the details of the encroached portion did not become clear. Therefore, an application was again filed on 26.03.2024 seeking appointment of the Court Commissioner for getting measured the sub-division of property (Pot-hissa). He further submits that the said application came to be rejected on the ground that although the earlier measurement and re-measurement was carried out by the

Commissioner, the encroached portion was mentioned in the map at Sr. No.4 of the map. He therefore submits that in order to ascertain the factual position, the Court Commissioner ought to have been again appointed.

4. Perusal of the record and the impugned order reveals that earlier a Court Commissioner was appointed at the instance of the petitioner vide Order passed below Exh.62 dated 14.10.2022. Thereafter, even for re-measurement, a Commissioner was appointed and the Commissioner has placed on record its report along with measurement map.

5. The impugned order records that as per the letter dated 03.04.2023 at Exh.69, the Court Commissioner has clarified that the encroached portion was mentioned in the map at Sr. No.4 at the map. Thus, it appears that despite there being sufficient material on the basis of the Commissioner's report and the map based on the re-measurement, a further attempt of the petitioner to get the Commissioner appointed is clearly an attempt to collect the evidence.

6. It has to be noted that the impugned order records that the petitioners-plaintiffs are entitled to file an appeal against the measurement before the office of Superintendent of Land Record and as such, the petitioners are always at liberty to file necessary appeal, if required.

7. In view of the fact that the petitioners have filed the suit for possession and damages, it is their duty to prove their case on the basis of independent evidence. The repeated applications for appointment of the Court Commissioner is an attempt to collect the evidence. Hence,

no interference is warranted with the impugned order and accordingly, the writ petition is **dismissed** with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

Privel