



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

WRIT PETITION NO. 5283 OF 2025

1. Mohan Prahlad Bhakre, Age 60 years, Occ: Agriculturist.
2. Ganesh Pralhad Bhakre, Age 52 years, Occ: Agriculturist.
3. Bharat Pralhad Bhakre, Age 52 years, Occ: Agriculturist.

All R/o Shiloda, Post Suk, Tq. & District Akola.

PETITIONERS

VERSUS

1. Shantaram Shankar Bondre, Aged 67 years,
Occ. Agriculturist, Tq. Akola and Dist. Akola.
2. Shrikrishna Shankar Bondre, Aged 58 years,
Occ. Agriculturist, Tq. Akola and District Akola.
3. Gopal Shankar Bondre, Aged 52 years,
Occ. Agriculturist.
4. Wasudeo Shankar Bondre, Aged 57 years,
Occ: Agriculturist.

All R/o Shiloda, Post Sukoda, Tq. and Distt. Akola.

RESPONDENTS

Shri V.R. Deshpande, counsel for the petitioner.
Shri Aniket Sawal, Advocate with Shri H.R. Gadhia, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 21, 2026

ORAL JUDGMENT

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

2. The petitioners take exception to the order dated 03.07.2025 passed by the trial Court below Exhibit 10 directing appointment of Deputy Superintendent of Land Records as Court Commissioner.

3. The petitioners are the defendant nos. 2, 3 and 4 in Regular Civil Suit No.181 of 2023 filed by the respondents for removal of encroachment and possession with respect to the property described in the plaint. The plaintiffs filed an application at Exhibit 10 for appointing the Deputy Superintendent of Land Records, Akola as Court Commissioner for measurement of the suit property. This application was resisted by the defendants. However, by order dated 03.07.2025, the application at Exhibit 10 was allowed and being aggrieved, the petitioners have challenged the said order by way of instant petition.

4. The learned counsel for the petitioners submitted that the plaintiffs in the suit are attempting to collect evidence through appointment of Court Commissioner which ought not have have been permitted by the trial Court. It is also submitted that the plaintiffs have taken contradictory stand in the suit about the alleged area of encroachment being 32 Are and subsequently as 39 Are and the appointment of the Court Commissioner is sought for clearing off the discrepancies in the plaintiffs' case.

5. As against this, the learned counsel for the respondents submitted that the suit is filed by the plaintiffs seeking removal of encroachment and in order to get the factual position clarified, the appointment of Court Commissioner was found necessary. He also submitted that the Court Commissioner has already carried out measurement of the properties in accordance with the impugned order and the map was placed on record before the trial Court which is helpful to decide the controversy involved in the suit.

6. While considering the controversy, it has to be seen that the suit is filed by the respondents-plaintiffs seeking removal of encroachment and possession. The plaintiffs have prayed for appointment of the Deputy Superintendent of Land Records as Court Commissioner for measurement of all the concerned properties bearing Gat nos.36 and 37 by affixing boundaries so as to identify the area of encroachment. The trial Court has observed in the impugned order that although measurement was earlier conducted and the measurement map was placed on record, however, the same does not specifically mention the area of encroachment and therefore the trial Court has found it necessary to appoint the Court Commissioner. The trial Court has also observed that the defendants have admitted that the earlier measurement was not correct. In order to get the factual position clarified, the trial Court found that the measurement by the Court Commissioner will bring on record the correct area of encroachment.

7. A perusal of the impugned order shows that the trial Court has recorded sound reasons for directing the appointment of the Court Commissioner. Considering the nature of the controversy involved in the suit relating to removal of encroachment, it is desirable that the measurement is carried out by an independent Government official so that factual position comes on record which is necessary for deciding the entire controversy involved in the suit. The learned counsel for the respective parties have pointed out the position of law with respect to the provisions of Order XXVI Rule 9 of the Code about which there is no dispute.

8. Considering the controversy involved in the suit related to the area of alleged encroachment, the direction for appointment of Court Commissioner does not appear to be perverse, rather it is necessary for deciding the actual controversy effectively. As such, no indulgence is warranted with the impugned order under Article 227 of the Constitution of India. The writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)