



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

WRIT PETITION NO.5481 OF 2025

PETITIONER

- 1) Manshodhan Narayanrao Jangde, Age About 52 years, Occ.: Agriculturalist, R/o Waki, Post Talegaon, Tal. and Dist. Yavatmal.

...VERSUS...

RESPONDENTS

- 1) Sau Asha Purushottam Bansod, Aged about 60 years, Occu.: Agriculturalist,
- 2) Purushottam Wamanrao Bansod, Aged about 65 years, Occ.: Agriculturalist, Amravati.
Both R/o Vishali Society, Yavatmal, Tq and Dist. Yavatmal.

Mr. K.P Mahalle, Advocate for Petitioner.
Mr. S.S. Bhalerao, Advocate for Respondent Nos.1 and 2.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 26/02/2026

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with consent of the learned counsels for both the parties.
2. By this petition, the petitioner has challenged an Order dated 03.07.2025, passed by the Civil Judge Senior Division, Yavatmal in Special Civil Suit No.74/2004 at Exh.145 thereby rejecting the

application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking re-issuance of a fresh commission for measurement of the suit property.

3. The petitioner is the original plaintiff No.2 in the suit for possession and removal of encroachment in respect of the property described in the plaint. The suit was partly decreed on 24.08.2007 and the defendants were directed to remove the encroachment of land admeasuring 1H 19R from the southern portion of the plaintiff's agricultural land. The appeal preferred against the judgment and decree dated 24.08.2007, was decided by the Appellate Court vide judgment and order dated 31.03.2012 in Regular Civil Appeal No.61/2007 thereby, the joint-measurement of the suit property by the Cadastral Surveyor from the office of T.I.L.R. as Court Commissioner was directed to be carried out. Accordingly, the joint measurement was conducted and the suit proceeded further. After the evidence of the Commissioner was over, the plaintiffs filed a fresh application at Exh.145 seeking re-issuance of a fresh commission for carrying out measurement of the suit property once again. The said application was resisted by the defendants and it came to be rejected by Order dated 03.07.2025, which is subjected to challenge by way of the instant petition.

4. The primary contention of Mr. K.P Mahalle, learned counsel for the petitioner is that in view of the controversy involved in the suit, re-measurement of the suit property is necessary, as the measurement map placed on record does not demonstrate the factual position.

5. Mr. S.S. Bhalerao, learned counsel for the respondent opposed the petition and vehemently submitted that the Cadastral Surveyor was appointed in accordance with the directions issued by the Appellate Court and the order of appointment of Court Commissioner has been duly issued. After the re-measurement was carried out, the plaintiffs admitted the Commissioner's Report and examined the Commissioner as their witness. Only because certain admissions were given in the cross-examination, the plaintiffs have sought issuance of fresh commission to nullify the effect of such admissions. He therefore, submitted that the attempt of plaintiff to get the fresh commission, is nothing but an attempt to collect the evidence, which is not permissible in view of the position of law.

6. While considering the rival contentions of the parties, it has to be seen that the Court Commissioner was appointed for joint-measurement of the suit property in accordance with the directions issued by the Appellate Court. The Commissioner's Report about the

joint measurement along with map has been placed on record and the Commissioner was duly cross-examined by the defendants.

7. Pertinent to note, the plaintiffs have admitted the Commissioner's Report and examined the Commissioner as their witness. As such, after the cross-examination of the Commissioner, a further application for issuance of fresh commission, is clearly an attempt to wash out the admissions given by the Court Commissioner during the course of his cross-examination. The position of law is well settled that a Commissioner cannot be appointed for the purpose of collecting the evidence.

8. Considering the nature of the controversy involved, the Appellate Court had directed a joint measurement of the suit property and accordingly, the Commissioner's Report has come on record. Thus, the application filed by the plaintiffs seeking appointment of a fresh commission being an attempt to nullify the effect of the cross-examination of the Court Commissioner, deserves to be rejected.

9. Perusal of the impugned order shows that the Trial Court has given due consideration to all the relevant aspects of the matter. Further, it is also recorded that the suit is more than 20 years old and the attempt for issuance of a fresh commission will unnecessarily

prolong the litigation, which can be decided on the basis of evidence which is already available on record. The reasons recorded by the Trial Court are plausible and does not show any perversity.

10. Having regard to the above mentioned factual and legal aspects, no interference is warranted under Article 227 of the Constitution of India with the impugned order. Hence, the writ petition is **dismissed**, with no order as to costs.

11. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

Privel