

MHAH230006432022

**ORDER BELOW EXH.37 IN R.C.S.No.202/2022**

1] Plaintiff in present suit has placed this application under Order XXVI, Rule 9 of Code of Civil Procedure 1908, for appointment of Court Commissioner to undertake the measurement of land bearing Gat no.474, situated within the limit of village *Aadhalgaon*, Tal. Shrigonda, Dist. Ahmednagar (hereinafter referred to as suit property), for the purpose of fixation and demarcation of boundaries of the suit property. Defendants no.1, 5 & 6 have resisted the application by filing their say at Exh.39. Perused the application and say. Heard, learned pleaders appearing for respective parties. Having regards to the rival contentions of the parties and factors required to be taken into account while entertaining an application for appointment of court commissioner, following points have been arisen for determination and discussion and my findings against each of the point along with its reason is as under :-

Sr. No.	Points	Findings
1.	Whether there is eminent necessity for appointment of court commissioner ?	Yes
2.	What order ?	Application is allowed.

:: REASONS ::**AS TO POINTS NO. 1 & 2 :**

2] Ld. advocate appearing for plaintiff has placed reliance on the Judgments of Hon'ble Bombay High Court in case of ***Rajaram Dadabhau Dhawale and Ors. Vs. Shivaji Kondiba Dhawale, Writ Petition No.10200/2022***, by virtue of which order as to appointment of court commission passed by trial court has been set aside by Hon'ble Bombay High Court on the ground that application for appointment of court commission has been placed before commencement of the hearing of the suit. By virtue of said Judgment, Hon'ble Bombay High Court had given liberty to plaintiff to file an application for appointment of court commissioner after elucidating his case by adducing evidence. As present application has been placed after cross-examination of plaintiff is over, same cannot be treated to be pre-matured. Moreover, through its Judgment rendered in case of ***Pandit Vitthal Landage Vs. Vishnu Govind Pawar 2025 NCBHC-AS 21728*** (dated 30/04/2025), Hon'ble Bombay High Court has observed that appointment of Court commissioner at an early stage of the proceeding is permissible under Order XXVI Rule 9 of Code of Civil Procedure, 1908 to elucidate the matter in controversy, especially in cases involving encroachment and boundary dispute. Thus, in light of ratio and observation made by Hon'ble Bombay High Court through Judgments supra, present application can be said to be well maintainable.

3] From the pleadings of the respective parties and 7/12 extracts produced on record, it appears that the land of the plaintiff and defendants is situated in Gat no.474. Moreover, plaintiff and

defendants appears to be co-sharers in Gat no.474. Even, plaintiff and defendants appears to be the adjacent owners of each other. Through their written statement, defendants have resisted the prayer of plaintiff to fix and demarcate the boundaries of the suit property. Therefore, questions pertains to boundary disputes and entitlement or dis-entitlement of plaintiff to get the boundaries of the suit property demarcated, are essential to be resolved on the basis of cogent and concrete evidence. From the pleading of the parties and cross-examination of plaintiff, there seems existence of boundary dispute between the parties. As discussed earlier, if there exists boundary dispute or dispute pertaining to encroachment, said fact must be elucidated by way of directing the local inspection to be done by Court Commissioner through measurement of the land of respective parties. No doubt, ocular evidence of both the parties on the issue of boundary dispute, would be contrary to each other and merely on the basis of ocular evidence, it would be highly difficult to arrive at definite conclusion pertains to question as to boundary dispute. In such circumstances, the report of Court Commissioner along with measurement map and sketch prepared by him, would be crucial evidence for determining the facts pertains to subsistence of boundary dispute. Unless an internal and joint measurement of land bearing Gat no. 774 is undertaken, it would not be practically possible to fix and demarcate the boundaries of the suit property. Therefore, in order to resolve question into controversy between the parties, internal and joint measurement of the land bearing Gat no. 474, is essential to be undertaken. Considering the above facts and circumstances, I answer point no. 1 in affirmative and pass following

order for point no.2 :-

:: ORDER ::

- 01.** Application at Exh.37 is allowed.
- 02.** Deputy Superintendent of Land Records, Shrigonda, Dist. Ahmednagar, is hereby appointed as Court Commissioner for undertaking internal and joint measurement of land bearing Gat no.474, situated within the limit of village *Aadhalgaon*, Tal. Shrigonda, Dist. Ahmednagar.
- 03.** Deputy Superintendent of Land Records, Shrigonda is hereby directed to undertake internal and joint measurement of land bearing Gat no.474, situated within the limit of Village, *Aadhalgaon*, Tal. Shrigonda, Dist. Ahmednagar and submit his report along with measurement map, specifying therein the boundaries of the land of plaintiff and defendants, on or before 09/03/2026
- 04.** Plaintiff is directed to pay the fees of measurement and make the necessary compliance.
- 05.** Issue writ, accordingly.

Shrigonda.
Date :- 27/01/2026.

(**H. J. Pathan**)
2nd Jt Civil Judge (S.D.),
Shrigonda.