

MHJN06-001879-2024

R.C.S. No. 362-2024
Tarsingh+1 Vs. Supada & ors.**ORDER BELOW EXH.06**(Passed on 22nd day of September 2025)

This is an application filed by plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure, for appointment of Court Commissioner i.e. Cadastral Surveyor of Land Records, Bhokardan for carrying out joint measurement.

2. It is contended that, the plaintiffs are the owner and possessor of an agricultural property situated at Mauje Janefal Gaikwad bearing gat no. 330 admeasuring 3H. 67R. Land. The defendants are the adjoining land holders. There was a common 'Bandh' between their lands. However, the defendants have encroached on the land of plaintiffs towards the eastern and western side on the suit property. The exact encroachment is uncertain and therefore a joint measurement for measuring both lands of plaintiffs and defendants is necessary.

3. Despite of providing sufficient opportunity the defendants failed to file their say. Hence, vide order dated 20.08.2025, this application came to be proceeded without say of the defendants.

4. I have heard learned advocate Shri. M.S. Deshpande for plaintiffs. None appeared for the defendants to advance any argument.

5. Perused record. This is a suit for removal of encroachment possession and permanent injunction. It is the case of plaintiffs that the land of defendants is adjoining to the suit property however, it seems that in the plaint the details of the property belonging to defendants is not given. Perusal of plaint shows that in the four boundaries columns it is shown that the suit property is bounded on the east, west, south and north by the property of the defendants. Perusal of written statement of defendant no. 1 to 5 at Exh. 11

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shows that they have admitted that their property which is in Gat no. 334 of Mauje Janefal Gaikwad Tq. Bhokardan is situated adjoining to the suit property of plaintiff and there is a north-south Banch in existence.

6. As per Order XXVI Rule 9 of C.P.C a local investigation can be ordered where it is necessary and required for the purpose of elucidating matter in dispute. The court commissioner can be appointed for proper and just adjudication of the matter.

7. Admittedly the dispute involved in this matter in regarding encroachment allegedly committed by defendants on the property of plaintiffs. It is also an admitted position that, defendants land is adjacent to the suit property of plaintiffs. It is settled principal of law that, whenever there is boundary dispute especially in respect of encroachment cases, it is better to direct joint measurement of both the properties i.e. one which is alleged have under encroachment and one which is alleged to have committed the encroachment. Thus, considering facts of present case a joint measurement will serve the purpose and it may bring correct position of the properties on record. Since, the case is based on boundary dispute and issue of encroachment is involved, the proper evidence can only there be on spot and unless a court commissioner is appointed this suit will not be adjudicated properly. Inasmuch as, the fact of the location, boundaries and encroachment only be brought on record by appointing an expert. Since the evidence of the defendant has yet not commenced, there is no question that the defence of the defendants would affect adversely. Still defendant has ample opportunity to adduce evidence either in favour or against the possible report of the court commissioner. Hence, for proper adjudication of the matter in right perspective it would be equitable to appoint to court commissioner with direction to measure property of the plaintiffs as well as the defendants. In the result I pass following order.

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ORDER

1. Application is allowed.
2. The Cadastral Surveyor of Land Records of Bhokardan is hereby appointed as Court Commissioner to conduct **joint measurement** of the land belonging to plaintiffs and defendants situated at **Mauje Janefal Gaikwad Tq. Bhokardan Dist. Jalna Gat No. 330 and 334** and to file his report containing map as well as factual position over the both property regarding **encroachment on suit property of plaintiffs (if any)** and to what extent and from which side and by whom such encroachment appears to have been made in view of Order XXVI Rule 9 of Code of Civil Procedure,1908.
3. The Court Commissioner shall issue prior notice to the parties and adjoining land holders before commencement of the measurement.
4. The plaintiffs and defendants to remain present on the suit property on the date of joint measurement along with necessary documents.
5. Plaintiffs to deposit commissions fees for joint measurement in the office of Land Records, Bhokardan as per rules **within 15 days from the date of this order.**
6. After depositing the court commissioner fee by plaintiffs, the court commissioner to conduct the measurement as per rules and shall file report alongwith map in the Court **on or before 10/11/2025 without fail.**
7. On compliance writ be issued.

Date :- 22.09.2025.

[Megha D. Dajjuka]
Joint Civil Judge Junior Division, Bhokardan.