

MHNS160005972025



R.C.S./117/2025

Madhukar Shankar Bhawar Vs. Babaji Vishwanath Bhavar**ORDER**
BELOW EXH.17

(Passed on 02/05/2026)

01. This is an application is filed by plaintiffs for appointment of T.I.L.R., as a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure for joint measurement of suit field Gat No. 84 total area 98 R and Gat No. 85 area 53 R situated at Mauja Puri, Taq. Chandwad, Dist Nashik on the suit site.

02. It is the contention of the plaintiffs that, the present suit is file by plaintiff for declaration, removal of encroachment and for perpetual injunction against the defendants in respect of above mentioned suit property. The plaintiff therefore filed this application for appointment of court commissioner for joint measurement of field Gat No. 84 and 85 of Mauja Puri, Talq. Chandwad, Dist. Nashik.

03. The defendant had objected the application and prayed to reject the application. Heard both the sides. The application is taken up for orders.

04. Following Points are arose for my determination I have recorded my findings and reasons thereon are as under :-

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs has made out grounds for appointment of Court commissioner for joint measurement, demarcation encroachment over the suit property Gat No. 84 and 85 ?	...Yes...
2.	What order ?	...The application is allowed.

REASONS**POINT NO.1 :-**

05. The dispute in between parties is in respect of suit field Gat No. 84 total area 98 R and Gat No. 85 area 53 R situated at Mauja Puri, Taq. Chandwad, Dist Nashik. The plaintiff has filed this suit for removal of encroachment. It is settled law that, without measurement of both the field property, adjoining field property it cannot be decide about the allege encroachment.

06. Hon'ble Bombay High court in ***Kisanlal Maniklal Rathi vs Dinkar Yashwant Patil, reported in 2004 (1) MhLj 138*** held that

“28. In view of this legal position, it appears to be absolutely necessary that the City Surveyor ought to have been appointed when the question arises as to whether any encroachment has been made or not. The appointment of City Surveyor or Cadastral Surveyor for taking joint measurement of the property owned by the plaintiff and the defendant for the purpose of local investigation under Order 26, Rule 9 of the

Code of Civil Procedure becomes relevant, In the present case, I am of the considered view that the defendant has made encroachment on the land of the plaintiff and since the matter is pretty old, I am not inclined to sent it back to the trial Court for de novo trial for taking measurements etc. The interest of justice would be served by directing the defendant to deliver the possession and the trial Court shall appoint the Commissioner, i.e. City/Cadastral Surveyor at the costs of the plaintiff for taking measurements, who shall submit his measurement report along with the map within three months after taking into consideration the area and boundaries mentioned in the four sale-deeds produced by the plaintiff. The Commissioner shall also show the exact precise and concise area under encroachment by measuring the entire survey No. 75/4-A and then submit the map and the report to the trial Court which shall form part of the decree.”

07. The main dispute is in respect of encroachment. The encroachment if any cannot be decided without joint measurement of entire suit field Gat No. 84 total area 98 R and Gat No. 85 area 53 R situated at Mauja Puri, Taq. Chandwad, Dist Nashik. By measuring and demarcating the disputed area as on suit site, no prejudice will cause to the other side. Thus, the matter is required to be elucidated by appointing TILR as court commissioner to measuring the suit field Gat No. 84 total area 98 R and Gat No. 85 area 53 R situated at Mauja Puri, Taq. Chandwad, Dist Nashik. Thus, in view of the aforesaid discussion, I answer point no. 1 in the affirmative and for point

No. 2 pass the following order:-

-:: O R D E R ::-

(1)	Taluka Inspector Land Records, Chandwad is appointed as Court Commissioner and he is directed to joint measure the entire suit field Gat No. 84 total area 98 R and Gat No. 85 area 53 R situated at Mauja Puri, Taq. Chandwad, Dist Nashik jointly and show the boundary mark area if any on the suit site and in his map and file his report and measurement map in the court within one month from the date of receipt of writ in this matter.
(2)	The Court Commissioner shall measure the suit field after following all the necessary steps for measurement and show boundaries if any in the map.
(3)	Charges of measurement shall be born by the both the parties equally. They shall pay the charges within fifteen days directly to TILR office. In case defendant failed to deposit the charges for measurement then plaintiffs shall directly deposit the charges for measurement to the office of TILR, Chandwad within a period of fifteen days. If the plaintiff has paid entire amount then he is entitled for half the charges from defendant.
(4)	Both the parties are directed to co-operate and supply necessary documents to the measurer as per his requirements.
(5)	Issue writ accordingly. Concern to comply.

Date :- 02/05/2026

(S. S. CHHALLANI)
Civil Judge (Jr. Dn.),
Chandwad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of Stenographer	<i>Namdev M. Shedge</i> Stenographer Grade -III
Name of Court	C.J.J.D. & J.M.F.C., Chandwad.
Date of Dictation	02/05/2026
Judgment/order signed by the PO on	02/05/2026
Judgment/order digitally signed by the PO on	02/05/2026
Judgment/order uploaded on	02/05/2026