

Order below Exh. 13 in Reg. C. S. No.84 of 2025.
(Passed on 30.06.2026)

The present application is filed by the plaintiffs for appointment of Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code for measurement of the plot of the plaintiffs and the plot of the defendants with further direction for fixing the boundary marks between the plot of the plaintiffs and defendants.

02. Read application and say. Perused the record. Heard Ld. advocate Mr. P. E. Salunkhe for the plaintiffs and Ld. advocate Mrs. P. V. Jadhav for defendants.

03. Plaintiffs contended that, the present suit is filed for permanent injunction restraining the defendants from obstructing the plaintiffs from making construction of compound wall from point A to point C shown the plaint map. Plaintiffs also prayed that the defendants may be further restrained from making claim on the land of the plaintiffs out of city survey No.1318 which is shown by letters ABCA in the map annexed with the plaint. The plaintiffs also prayed for mandatory injunction directing the defendants to remove his waste materials, stones etc. from the area of the plaintiffs plot particularly shown by letters ABCA in the map annexed with the plaint.

04. Plaintiffs also contended that, on 23.01.2023 the measurement of the property of the plaintiffs was carried out in measurement case No.256/2023. The defendant was present at the time of the said measurement. The area of the city survey No.1318

was found as per form of Sanad for building side maintained by department of land records.

05. On the land of city survey No.1318, there is construction of the house of plaintiff and on the land of city survey No.1317 there is construction of house of the defendant. There is open Galli between the houses of the plaintiff and the defendant. The defendant made construction of his house without leaving any marginal space towards the side of the plaintiffs property. Thus for ascertaining the exact entitlement of the plaintiffs property it is necessary to appoint deputy superintendent of land records as court commissioner with direction to court commissioner to carry out measurement of the plot of the plaintiff and the plot of the defendant and to fix the boundary between the property of the plaintiff and the defendant. On all these contentions plaintiffs urged to allow the application.

06. On the other hand, defendants opposed the present application by filing their say below Exh.13 contending that, no cause of action arose in filing present application. The reasons assigned to the application are not just and proper. As per measurement carried out of property of plaintiffs and defendants on 20.05.1994 and 29.01.2023 boundary marks between the property of plaintiffs and defendants has been fixed. The present application is filed only in order to protracting the matter. At this stage, there is not required to be carried out measurement of property of plaintiffs and defendants as stated by plaintiffs in application. With these lights they urged to reject the application.

07. Before dealing the instant application on merits and demerits it is necessary to highlight ratio laid down in precedents filed by Ld. advocate of plaintiffs side on record pertaining to the appointment of a court commissioner under order 26 rule 9 of Code of Civil Procedure preferably for measurement properties belonging to both the parties to the suit and when dispute regarding fixation of boundaries and encroachment upon suit properties.

(1) **Chandramani s/o Marotrao Pantavne Vs. Smt. Shashikala w/o. Brijlal Bisen reported in 2016 (3) ALL MR 139** wherein Hon'ble High Court observed in para No.6 that,

(6) "Be that as it may, in my opinion, the matters of measurements of plots in a City like Nagpur are not left to the imagination. The records of the Survey Department, the sanction of the layout maps etc., are required to be considered by an expert person, namely the surveyor. In my opinion, it was risky for the Lower Appellate Court to go into the niceties of the measurements, application of scale and so on and so forth on its own without the spot being actually seen regarding the property actually purchased and the property actually in possession. Therefore, to draw conclusions on the basis of papers before the Court would be not reaching to the truth of the matter. This Court has repeatedly held that in such cases, a surveyor from the Govt. Department, who has access to all the govt. records, should be appointed to find out the truth, that too after considering the claims of rival parties, their sale-deeds, maps and so on and so forth and then the parties may be allowed to object to the same if they do not agree with the report of the surveyor and then proceed to draw conclusions. However, this has not happened in the present case. The Lower Appellate Court itself,

instead of entering into the exercise, should have, following the decisions of this Court, appointed the Court Commissioner, i.e., the Surveyor of the Govt. Department. In this situation, admitting this appeal is of no use and instead, I think, at least, at this stage, the exercise should be done and it is for that reason the remand order is necessary.”

(2) **Ramzan Sheikh Chand Sheikh (D) thr. LRs. & Ors. Vs. Panjab s/o. Nathuji Gawande reported in 2016 (4) ALL MR 765** where in Hon’ble High Court observed in para No.7 that,

(7) “The trial Court should have taken into consideration that it is always desirable to have disputed suit property measured by competent surveyor to find out encroachment and its extent and that, oral evidence cannot prove such contentious issue conclusively. This Court has time and again expressed opinion about the necessity of duly drawn measurement plan/map in any suit in which there is a boundary dispute.”

08. In the light of aforesaid proposition of case laws, when boundary dispute arose between parties it is always desirable to have disputed suit properties measured by competent surveyor to find out encroachment upon property in disputed. The present suit is filed for mandatory injunction and permanent injunction against defendants. There is not in dispute that, plaintiffs are owner of city survey No.1318 and there is construction of the house of the plaintiffs over said property. Undisputedly, defendants are owners of city survey No.1317 and they have made construction upon their property. In present case, plaintiffs have specifically come with the case that, defendants have made construction of his house without leaving any

marginal space towards the side of the plaintiffs property. Defendants in their say contended that, on 20.05.1994 and 29.01.2023 the measurement of property of plaintiffs and defendants has been carried out. However, defendants in support of their contentions have not adduced any documents on record showing that the measurement of the property of the plaintiffs and defendants was carried out by court commissioner in another measurement case.

09. In present claim, there is real controversy involved between parties with the respect of fixation of boundaries between the plot of plaintiffs and the defendants and encroachment upon the property of plaintiffs. Hence, in the light of aforesaid proposition of case laws, in order to determine real controversy involved between respective parties the measurement of plot of plaintiffs and defendants is required to be carried out. So considering the nature of the dispute and in order to elucidate the matter in controversy, it would be appropriate to appoint court commissioner to the deputy superintendent of land records for measurement of the plot of the plaintiffs and the plot of defendants as urged by the plaintiffs in application. Hence, in the interest of justice the present application is liable to be allowed. In the result, I proceed to pass following order :-

ORDER

1. The application below Exh. No.13 is hereby allowed.
2. The Deputy Superintendent of Land Records is hereby appointed as Court Commissioner and directed him to measure plot of the plaintiffs and plot of the

defendants and to note the existing construction and encroachment upon property of plaintiffs if any.

3. The Deputy Superintendent of Land Records is hereby directed to fix the boundary marks between the plot of plaintiffs and plot of defendants and file the map and measurement report within two months from the date of this order.
4. Plaintiffs to pay necessary commission fees directly to the concerned office.
5. Plaintiffs to file the necessary documents to issue writ.
6. No order as to costs.

Wai.
Date :- 30.06.2026.

(S. R. Shinde),
Jt. Civil Judge, J. D., Wai.