

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.878 OF 2015

MAHANANDA SUBHASH TOPANNA
AND OTHERS

PETITIONERS

VERSUS

JIJABAI VISHWANATH BOLE AND OTHERS

RESPONDENTS

Mr.M.L.Dharashive, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/02/2015

PER COURT :

1. The petitioners submit that the respondents/plaintiffs have preferred RCS No.283/2012 for removal of encroachment and for possession. Recording of evidence is under way. Application Exh.64 is filed by the respondents/plaintiffs, seeking appointment of a Court Commissioner so as to measure the boundaries and draw a map.

2. The petitioners submit that earlier a measurement was carried out. There is no need for appointment of a TILR. The measurement carried out prior to the institution of the suit, would assist the Trial Court in the proper adjudication of the real controversy.

3. I have considered the submissions of the learned Advocate and I have gone through the petition paper book with his assistance. Issue is as regards encroachment and recovery of possession. This Court in the matter of Habibkhan s/o Inauttalakhan and others Vs. Waman s/o Govind Rathod and others, reported at 2012 (2)

Mh.L.J. 541 has considered the situation and has concluded that the appointment of a TILR for measurement of the properties of the petitioner as well as the defendants would assist the Court in the proper adjudication of the suit.

4. In the instant case, since the TILR has been directed to measure the properties of the plaintiffs and the defendants jointly, fix the boundaries and submit a report alongwith a map, in my view, would assist the Trial Court in concluding as to whether the defendants have encroached upon the property.

5. In the light of the above, I do not find that the impugned order calls for any interference. Therefore, the petition is dismissed.

(RAVINDRA V. GHUGE, J.)