

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.25393 OF 2015

Balu Shankar Pawar and another

.. Petitioners

Versus

Kamlabai Vishwanath Pawar and another

.. Respondents

Mr. A. T. Gade, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 28th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 31.07.2015 passed by the Learned District Judge-2, Niphad, by which order the application for appointment of the Court Commissioner at the appellate stage came to be rejected. It is required to be noted that at the trial stage the Trial Court considered the measurement in respect of the lands bearing Gat Nos.727 and 734. The suit bearing RCS No.99 of 2000 thereafter proceeded and ultimately came to be decreed by the Trial Court by judgment and order dated 11.12.2003. The Plaintiffs are in Appeal and have filed Regular Civil Appeal No.144 of 2005. In the said appeal the instant application Exh.29 came to be filed for measurement of the lands in question being lands being Gat Nos.727 and 734. The appointment of the Court Commissioner to measure the land was

sought on the ground that earlier measurement was not carried out properly as all the five parts of the original Survey Nos.169/1 to 169/5 were not measured. The Trial Court considered the said application and has rejected the same by the impugned order. The Trial Court observed that the Appellants/Petitioners had not objected to the measurement which was taken into consideration by the Trial Court. The Trial Court further adverted to the fact that in the suit there is no prayer for cadastral measurement. It seems that the Appeal came to be dismissed for default on 06.01.2012 and thereafter came to be restored on 01.10.2013 and immediately thereafter the instant application came to be filed. The Lower Appellate Court was of the view that since on the Appeal being taken up for hearing that the instant application was filed the intention appeared to be to protract the hearing and disposal of the Appeal. On merits, the Lower Appellate Court observed that the objections to the measurement which has been taken into consideration by the Trial Court was without substance and the Lower Appellate Court has observed that it did not find any illegality in the measurement carried out by the measurer while measuring both the lands bearing Gat Nos.727 and 734. The Learned Counsel for the Petitioners seeks to place reliance on the judgment of a Learned Single Judge of this Court reported in **2014(5) Mh.L.J. 60** in the matter of **Hemraj s/o Gangaram Iname and others Vs. Suryabhan s/o.**

Bhiva Dhawas. The facts of the said case are distinguishable from the facts of the present case, as in the said case there was a boundary dispute. In the instant case, as indicated above measurement has been taken into consideration by the Trial Court whilst adjudicating the suit. Hence, the said judgment would not further the case of the Petitioners in any manner. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.