

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

27 WRIT PETITION NO. 9824 OF 2016

SHANKAR GOVINDA HOLKAR AND OTHERS
VERSUS
BABU RAMA HOLKAR

...
Advocate for Petitioners : Venjane Tukaram M.
AGP for Respondent/State : S.K. Tambe
...

CORAM : T.V. NALAWADE, J.
DATED : 26th September, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 18 in R.C.S. No. 597/2015 by the learned Civil Judge, Senior Division, Latur. Heard the learned counsel for petitioners.
2. The aforesaid suit is filed by respondent Babu Holkar for relief of declaration, for possession of 40 R. portion of land. It is the contention of Babu that he has purchased 62 R. portion of land from land Gat No. 85/1 under registered sale deeds and the defendants have made encroachment over this portion. Along with the plaint, he has given hand sketch map of encroachment. The plaintiff has filed application under Order 39 Rule 1 and 2 of Civil Procedure Code for relief of temporary injunction to prevent the defendants from making construction over the so called encroached portion.
3. In application at Exh. 18 the plaintiff had prayed for

appointment of Court Commissioner to bring on record the real state of affairs. The Court after hearing both the sides has appointed T.I.L.R. as Court Commissioner and direction is given to T.I.L.R. to take measurement of the land purchased by the plaintiff in Gat No. 85/1. There is grievance of the present petitioners, respondents that there was no specific prayer in the application filed for appointment of Court Commissioner and the Trial Court could not have made such order. This submission is not at all acceptable. In view of the nature of relief claimed in the suit itself and as the plaintiff wants to see that the nature of the suit property is not changed, he wants the land get measured before the decision on application under Order 39, Rule 1 and 2 of C.P.C. Though there are no specific contentions in the application, the aforesaid material was there before the Court and the purpose behind such measurement is known to the Court and to the present petitioners. This Court holds that the Trial Court has not committed any error in allowing the application. There is no need to issue notice to other side. The petition stands dismissed. The Commissioner in such a case is expected only to measure the land and submit the report to ascertain the encroachment.

[T.V. NALAWADE, J.]

ssc/