

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 WRIT PETITION NO. 12575 OF 2016

RAGHUNATH GANPAT ZAWARE AND ANOTHER
VERSUS
RAMRAV NATHAJI RAUT AND OTHERS

Ms Suvarna M Zaware, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 22 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Civil Judge Junior Division Rahata on Exhibit 58 in Regular Civil Suit No.907 of 2012. The learned Civil Judge has rejected the application filed by the present petitioners, original defendants for appointment of Taluka Inspector of Land Records as Court Commissioner. Heard learned counsel for the petitioners.

2) The suit is filed against the present petitioners by respondent Nos.1 to 8 for relief of fixing boundary marks of their land and the relief of permanent injunction

is also claimed. It appears that during pendency of the suit as per the prayer made by the plaintiffs, Taluka Inspector of Land Records was appointed as Court Commissioner and he has measured the land and report is also submitted.

3) The written statement of the defendants shows that the defendants have contended that the defendant had applied for measurement of the land through Taluka Inspector of Land Record before filing of the suit and on 30-10-2012 the land was actually measured and the plaintiff was present at the time of measurement and he participated in the measurement. In spite of this circumstance, application was moved by the present petitioners, defendants for appointment of Taluka Inspector of Land Record to again measure the land.

4) In civil suit the case is required to be decided on preponderance of probability. If there is one report of the Taluka Inspector of Land Records in favour of present petitioners, original defendants, then the petitioners will be entitled to prove that report and if the report of the

measurement is proved by the present petitioners, the Court will certainly consider that report in support of the case of the present petitioners, defendants. When the Court has appointed the Taluka Inspector of Land Records for measurement of the land of the plaintiffs, in view of the nature of the relief claimed in the plaint, evidence of that Court Commissioner needs to be recorded and that evidence also needs to be considered and appreciated by the Court. Only because Court Commissioner was appointed on the basis of application given by the plaintiffs, the defendants do not get right to get one more Court Commissioner appointed for the same relief. With the aforesaid observations, the present petition is disposed of as dismissed.

Sd/-
(T.V. NALAWADE, J.)

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