

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11272 OF 2016**

Shri Haridas Ramdas Salunke
and Ors.

..Petitioners.

Vs

Zilla Parishad Sangli and Ors

.. Respondents

Ms. Monica P. Kshirsagar, Advocate for Petitioners.

**CORAM : R.G.KETKAR,J.
DATE : 30/11/2016**

PC:

1. Not on Board. At the request of Ms. Kshirsagar, taken up for admission. Heard Ms. Monica Kshirsagar, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 16.7.2016 passed by the learned Civil Judge, Jr. Dn., Kavathe In R.C.S.No.30 of 2000. By that order, the learned trial Judge rejected the application filed by the plaintiffs for measuring the suit property through Taluka Inspector of Land Records.
3. In support of this petition, Ms Kshirsagar submitted that the Court Commissioner appointed pursuant to the order admitted in evidence that he did not take into consideration the Gift Deed. She submitted that as the Court Commissioner admitted the fact of not taking into consideration the Gift Deed, it is absolutely necessary to carry out measurement once again.
4. It is not possible to accept this submission. In paragraph 5

of the impugned order, the learned trial Judge has observed that the Appellate Court has remitted the matter to the trial Court by order dated 30.3.2012. As per the directions of the Appellate Court measurements were carried out by the T.I.LR. in view of the order passed at Exhibit 125. The measurer Dattatraya M. Suryawanshi was examined as PW 3 at Exh.137. He produced report vide Exh.132. The Court Commissioner was thoroughly cross-examined and at that stage the plaintiffs filed purshis through his advocate vide Exh.134 and thereafter moved the present application for carrying out measurement as the measurement was not made as per the directions of the Appellate Court. The learned trial Judge observed that no specific directions were issued by the Appellate Court as regards measurement of the suit property or any part thereof.

5. For the reasons recorded in paragraph 5 of the impugned order, I do not find that the learned trial Judge has committed any error in dismissing the application. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)