

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13703 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr.Akshay A. Kulkarni, Advocate for Petitioner.
	CORAM : R. G. KETKAR, J. DATE : 14/12/2016

P.C.:

1. Not on board. At the request of Mr.Kulkarni, taken up for admission
2. Heard Mr.Akshay Kulkarni, learned counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant', has challenged the judgment and order dated 8.7.2016 passed by the learned 2nd Jt. Civil Judge, Junior Division, Jaisingpur below Exhibit-25 in R.C.S. No.287/2012. By that order, the learned trial Judge allowed the application filed by the respondent/plaintiff for appointment of Court Commissioner for carrying out measurement of the suit

property.

4. In support of this Petition, Mr. Kulkarni contended that the defendant has denied the title of the plaintiff. He has taken me through the plaint to contend that the plaintiff has vaguely made allegations about the encroachment by the defendant from all sides. The plaintiff has also not enclosed any map of the suit property along with the plaint. Even the description of the suit property is not in conformity with Order VII Rule 3 of C.P.C. By filing present application, the plaintiff wants to use the machinery of the Court for collecting evidence.

5. I have considered the submissions advanced by Mr.Kulkarni. I have also perused the material on record. In paragraphs-5 & 7 of the impugned, the learned trial Judge has observed that from the averments made by the parties, the suit involves boundary dispute and measurement is essential for deciding the same. The learned trial Judge relied upon the decision of this Court in *Meenadevi Vatvani v. Narmadabai Gopaldas Zanwar*, 2015(6) *Mh.L.J.* 578

wherein it is held that the suits involving boundary dispute must be decided on basis of measurement plan or map drawn to scale by competent Government official from the office of TILR or DILR, as the case may be.

6. For the reasons recorded in paragraphs-5 & 7 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the petition fails and the same is dismissed.

7. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)