

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

WRIT PETITION NO. 450 OF 2016

Maroti s/o. Ramchandra Singanwad,
Age : 72 years, Occ. Agri.,
r/o. Chandola, Tq. Mukhed,
Dist. Nanded
and others

..Petitioners

Vs.

Ramrao s/o. Shankar Singanwad,
Age : 52 years, Occ. Agri.,
r/o. Chandola, Tq. Mukhed,
Dist. Nanded
and others

..Respondents

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Mr.P.P.Uttarwar, Advocate for petitioners
Mr.U.B.Bilolikar, Advocate for respondent nos.1
and 3

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CORAM : S.V. GANGAPURWALA, J.

DATE : APRIL 24, 2017

PER COURT :

The application filed by the petitioners
for appointment of the T.I.L.R. as Court
Commissioner to measure the suit property, has
been rejected by the trial Court.

2. Mr.Uttarwar, learned Counsel for the
petitioners submits that the suit has been filed

for recovery of possession of the encroached area and for fixing the boundaries. He submits that there is dispute between the parties regarding identity of the property and encroachment for which the T.I.L.R. is required to be appointed as Court Commissioner.

3. The learned Counsel for the petitioners submits that appointment of the Court Commissioner under Section 75 Order XXVI Rule 9 of the Code of Civil Procedure would be necessary to elucidate the matter in dispute and to assist the Court in arriving at a just conclusion. According to the petitioners, the earlier measurement carried out by the T.I.L.R. is not proper and not in consonance with the procedure laid down. He therefore submits the impugned order rejecting the application filed by the petitioners for appointment of the T.I.L.R. as Court Commissioner, is erroneous.

4. There cannot be any dispute regarding the proposition that whenever there is a dispute with regard to the boundaries, fixation of boundaries and or encroachment, it is expedient to measure the property with the help of an expert. In the present case, the petitioners/plaintiffs had got the property measured by the T.I.L.R. which measurement, according to the plaintiffs, was not proper. However, again appointing the T.I.L.R. to re-measure the property would lead to a chaotic situation inasmuch as there would be two measurements carried out by same authority.

5. To avoid the said contingency, the proper course would be of Nimtana measurement i.e. measurement by the appellate authority. The plaintiffs are not precluded from approaching the appellate authority for measurement. The plaintiffs, if they so desire, may get the suit property measured by the appellate authority and produce the map in the suit.

6. With the aforesaid directions, the Writ
Petition stands disposed of. No costs.

[S.V. GANGAPURWALA, J.]

kbp