

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

WRIT PETITION NO. 13645 OF 2017

SUNIL NIVRUTTI AHER AND ANOTHER
VERSUS
SHIVAJI BHAUSAHEB AHER

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Advocate for Petitioners : Mr Kale Ajeet B.

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CORAM : V.K. JADHAV, J.

Dated: December 04, 2017

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PER COURT :-

1. I do not find any substance in this writ petition.
2. The petitioners/original defendants have filed an application exh.23 for appointment of the court commissioner in light of pleadings raised by way of counter claim about encroachment made over the land owned and possessed by the petitioners/defendants by the other side and also constructions made over the encroached portion by the other side, illegally. On the basis of said application, after giving an opportunity of hearing to both the sides, trial court has passed the order below exh.23 dated 19.7.2010 directing the Deputy Superintendent of Land Records to measure both the

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lands, find out the encroachment, if any, and submit the report alongwith the map. It further appears that by order dated 13.8.2010 court has corrected the said order and directed the Deputy Superintendent of Land Records to carry out the measurement and further specific directions have been given to the Deputy Superintendent of Land Records.

3. It appears that, thereafter, the Deputy Superintendent of Land Records has measured both the lands and submitted the report before the court alongwith the map. It is not out of place to mention here that, alongwith the plaint other side has produced on record measurement map prepared by the authority, however, petitioners/original defendants in terms of their pleadings by way of counter claim submitted aforesaid application exh.23 seeking appointment of the court commissioner for measurement of both the lands and to show the encroachment, if any, on the lands owned and possessed by the petitioners/defendants. It further appears that petitioners/defendants are not

happy with the measurement carried out by Deputy Superintendent of Land Records and the map and report submitted by him. Trial court by its impugned order dated 3.5.2017 has also observed that, the court commissioner has filed report in terms of the order passed below exh.23 and even present petitioners have not taken any objection for the same. The petitioners/defendants are certainly not at liberty to file successive application for appointment of the court commissioner since earlier report submitted by the court commissioner is not favourable or not as per their expectations.

4. Learned counsel for the petitioners submits that the petitioners may be granted liberty to file an application, in case, occasion so arises after cross examination of the said Deputy Superintendent of Land Records, is over. I do not find any substance in this submission because that would lead to unnecessary complications in the matter. There are two measurement reports and map submitted before the

court. Petitioners/original defendants are at liberty to cross examine both the witnesses and it is for the trial court to decide the matter in terms of the case put forth by the respective parties. I do not find any substance in this writ petition. Writ Petition is hereby dismissed. No costs. Needless to say that, these observations will not come in the way of the trial court to decide the case on its own merits.

(V.K. JADHAV, J.)

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