

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

**WRIT PETITION NO. 433 OF 2016**

Prabhakar s/o Rajeshwarrao Kasande ..PETITIONER  
(Orig. Plaintiff)

VERSUS

Ramrao s/o Devrao Dinde & Ors. ..RESPONDENTS  
(Orig. Defendants)

Mr. A.G. Godhamgaonkar, Advocate for Petitioner;  
Mr. J.M. Markute, Advocate for the Respondent  
Nos. 1 to 3.

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 11th SEPTEMBER, 2017**

**ORAL ORDER :**

The Petitioner-plaintiff filed Regular Suit No. 168/2008 for removal of encroachment. The suit for removal of encroachment is based on two measurements, one carried out before filing of the suit on 22<sup>nd</sup> May, 2000 and second on 26<sup>th</sup> February, 2010, after filing of the suit.

2. Application Exhibit 59 came to be moved under Order 26 Rule 9 of the Civil Procedure

Code, seeking appointment of T.I.L.R. as a Court Commissioner for measurement of the encroached portion, reason being earlier both measurements do not reflect the encroached portion.

3. The Trial Court rejected the said prayer, as such, this petition.

4. In my opinion, the submission that the encroached portion is not shown in two measurement reports, as the boundaries of the land has undergone change, in view of the acquisition of land for the percolation tank, will be of hardly any consequences as the suit land was measured after filing of the suit.

5. However, by granting liberty to the Petitioner to move application afresh for appointment of Court Commissioner for the same cause, if from the evidence of earlier Court Commissioner it is not established as to the

alleged encroached portion of the Petitioner is not established.

6. If such application for fresh measurement and appointment of T.I.L.R. is made by the Petitioner, the Court may consider allowing the same, of which the measurement cost will be borne by the Petitioner, provided the decision of the Court on the issue as to whether, the fresh measurement is required or not will be of course subject to further scrutiny, if so occasion arises.

7. With the above observations, writ petition stands disposed of.

**(NITIN W. SAMBRE, J.)**

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