

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13233 OF 2017

SHIVAJI MUKUNDA MALI AND OTHERS
VERSUS
KISANRAO MAROTIRAO DESHMUKH

...

Advocate for Petitioners : Mr. A N Nagargoje

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CORAM : V. K. JADHAV, J.
DATED : 15th NOVEMBER, 2017

PER COURT:-

1. Heard.

2. I do not find any substance in this writ petition. The respondent-plaintiff has instituted a suit for removal of encroachment. Earlier to the present suit, respondent had instituted a suit bearing R.C.S. No. 45 of 2009 for perpetual injunction against the present petitioners-original defendants and a joint measurement of land of both the parties has been effected in the said suit. However, subsequently, the respondent has withdrawn the said suit with liberty to file suit for possession. The petitioners have not raised any counter claim. It is for the respondent to prove the alleged encroachment over the suit land. The petitioners certainly are at liberty to dispute the aforesaid measurement on the grounds available and also cross examine the witness, who has carried out the measurement and prepared a map accordingly. It is thus,

unnecessary to allow the application filed by the petitioners-defendants at this stage, requesting for re-measurement of the suit land and his own land.

3. In view of this, writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/