

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

**WRIT PETITION NO. 13948 OF 2017**

GAJANAN RANGNATH CHIKATE AND OTHERS  
VERSUS  
SHAIKH MUSIB SHAIKH RAFIQ AND OTHERS

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Advocate for Petitioners : Mr Gore Ravindra Vitthal

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**CORAM : V.K. JADHAV, J.**  
**Dated: December 04, 2017**

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**PER COURT :-**

1. Application filed by the petitioners/original defendant nos.1 to 5 at exh.43 came to be rejected by the trial court on the ground that, as per the earlier order passed by the Trial Court, the measurement of the land gat no.128, 129 and 130 came to be carried out by the Court Commissioner and report alongwith map has been submitted before the Court. The petitioners/original defendants No.1 to 5 have challenged the said report and map only on the ground that said measurement had taken place behind back of the petitioners. The learned judge of the trial court has observed that, after cross-examination of the said Court Commissioner is over and, if it appears to the Court

that the opportunity was not given to the present petitioners while carrying out the said measurement, in that event, the petitioners are at liberty to file an application for appointment of the Court Commissioner and his application exh.43 at this stage cannot be entertained.

2. In view of the liberty granted by the trial court to the petitioners as aforesaid, the petitioners can use that liberty after cross-examination of the Court Commissioner is over, and, the trial court may consider the application if submitted on its own merits. Writ Petition accordingly disposed of. No costs.

**( V.K. JADHAV, J. )**

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