

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 1113 OF 2015

PANDURANG MANIK CHAVAN
VERSUS
SOPAN SANTARAM THORAT AND OTHERS

.....
Advocate for Petitioner : Mr. Gangakhedkar Shailendra S.

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CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2018

PER COURT:-

1. I find no substance in this Writ Petition.
2. In the pending suit, at the fag end of the trial, the respondents/plaintiffs have filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908, for appointment of Court Commissioner to make a local investigation. The trial court has allowed the same and aggrieved by the same, the petitioner/original defendant no.1 has preferred this Writ Petition.
3. The learned counsel for the petitioner submits that the respondents/plaintiffs have filed application exhibit 92 only with

an intention to keep the suit pending and to rectify the mistake committed by them. The learned counsel submits that the evidence of both the parties is closed and the final arguments have also been heard. Thus, the application exhibit 92 has been filed at a belated stage. Even though, the trial court has allowed the same.

4. None present for the respondents.

5. It appears that the suit has been instituted for recovery of possession of the encroached portion and the issue to that extent has also been specifically framed by the trial court. Admittedly, the joint measurement of the suit land and the land of the present petitioner is not carried out. This Court, in catena of judgments, has held that in order to establish encroachment, it is necessary that both the lands should be measured. If measurement is carried out when the suit has been instituted for recovery of possession of the encroached portion of the suit land, such joint measurement would ultimately help the court to arrive at a correct conclusion and decide the *lis* between the parties finally.

6. In view of the above, I find no fault in the impugned order.

The Writ Petition is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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