

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

WRIT PETITION NO. 6439 OF 2018

ALKA RAJKUMAR VYAWAHARE THROUGH IT'S SPL
POWER OF ATTORNEY RAJKUMAR NIVRUTTI
VYAWAHARE
VERSUS
SACHIN VITTHAL SURYAWANSHI

...
Advocate for Petitioner : Mr. Pathan Hamzakhan I.

...
CORAM : V.K. JADHAV, J.
Dated: August 13, 2018

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PER COURT :-

1. Heard.
2. I find no substance in this writ petition.
3. Learned counsel for the petitioner submits that, the learned District Judge-2, Hingoli while disposing of the RCA No.13/2012 remanded the matter back to the lower court with direction to appoint the DSLR as Court Commissioner for measurement of the lands of the plaintiff and defendant, respectively. Learned counsel submits that, in view of the directions given by the District Judge-2, Hingoli, the Trial Court has passed the impugned order below exh.69 in RCS No.46/2010. Though, the trial court in clause no.1 of the operative

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part of the order has directed joint measurement of lands of the plaintiff and defendant, failed to specify the land belonging to the plaintiff, however, in clause no.2 of the operative part of the order directed the Commissioner to consider the area and four boundaries mentioned in the sale deed of the land of the defendant, at the time of measurement and in the measurement map. Learned counsel submits that, impugned order below exh.69 is contrary to the directions given by the District Judge, Hingoli.

3. I do not find any substance in the submissions made on behalf of the petitioner. Petitioner is the original defendant. Though, in clause no.1 of the operative part of the order below exh.69, trial court has directed joint measurement of the lands of the plaintiff and defendant, there is no reason to specify the description of the land of the plaintiff, since the description has already been shown in the plaint. So far as land belonging to petitioner/defendant is concerned, trial court has rightly directed the Commissioner to

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consider the area and four boundaries mentioned in the sale deed of the land of the defendant at the time of measurement. Trial Court has directed the same for the reason that petitioner/defendant has not made any counter claim and in that way it was necessary to give specific directions as to the measurement of the land belonging to petitioner/defendant. In view of the same, I do not find any fault in the order passed below exh.69. Writ Petition is accordingly dismissed. No costs.

(V.K. JADHAV, J.)

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aaa/-

Anuja
Abhay
Ankush

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by Anuja Abhay
Ankush
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