

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

WRIT PETITION NO. 7841 OF 2018

Tukaram Ramu Chaudhari

.. Petitioner

Versus

Yamunabai Ukha Mahajan
and others

.. Respondents

Shri Ajeet B. Kale, Advocate for the Petitioner.

CORAM : S. V. GANGAPURWALA, J.

DATE : 21TH SEPTEMBER, 2018.

FINAL ORDER :

. The petitioner is original plaintiff. He has filed suit for simplicitor injunction. The petitioner filed an application for appointment of T.I.L.R. as Court Commissioner. The application is rejected. Aggrieved thereby present petition.

2. The learned advocate for the petitioner submits that, the defendants had got their land measured. The plaintiff has also got his land measured. An independent measurement is required. In view of that, the application for appointment of Court Commissioner was filed. The appointment of Court Commissioner for measurement would assist the Court in arriving at just conclusion. Only because previously the land has measured that would not be an embargo for the Court to appoint

the Court Commissioner for measurement. The learned advocate relies on the judgment of the learned Single Judge of this Court in a case of Dattatray Namdev Kalake Vs. Bapu Bhairu Bhivungade and others reported in *2015(1) Mh.L.J. 892*.

3. The suit is for simplicitor injunction. The plaintiff has already got his land measured through T. I. L. R. The defendants have also got their land measured through T. I. L. R. It is not a case of possession of an encroached portion or otherwise.

4. The respective parties have right to prove the measurement maps by adducing necessary evidence. If the plaintiff is aggrieved by any measurement conducted, there is provision for Nimtana measurement. The purpose for which the Court Commissioner is sought does not subsist more particularly when the suit is for simplicitor injunction and that measurements are already conducted by the plaintiff and defendants and it is for the parties to prove the measurement. With these observations the writ petition stands dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 18

Bhalchandra
Sudhakar
Bodke

Digitally signed
by Bhalchandra
Sudhakar
Bodke
Date:
2018.09.26
10:14:32 +0530