IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7703 OF 2016
SAMBHAJI BANSI LAWANDE AND OTHERS
VERSUS
KONDIRAM KARBHAI GHORPADE AND OTHERS
...
Advocate for the Petitioners : Shri Narwade Narayan B..
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 17th January, 2018

Per Court:

1 The Petitioners, who are the original Plaintiffs, are aggrieved by the order dated 30.03.2016 passed by the Trial Court, by which, the application Exhibit-45 filed by the Petitioners in RCS No.353/2012 seeking the appointment of a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, has been rejected.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order and has canvassed a host of factors.

3 It is settled law that the local inspection under Section 75 of the Code of Civil Procedure r/w Order 26 Rule 9 is to be conducted not for the purpose of collecting evidence, but to elicit further information so as to assist the Trial Court. This Court has consistently held that the Court Commissioner should normally be appointed only after the recording of oral evidence has commenced.

4 In the instant case, the suit land was already measured by the

Taluka Inspector of Land Records (TILR) prior to the institution of the suit. It requires no debate that if the suit has been preferred on the basis of such measurement, unless the measurement by the TILR and the map, if any, is proved to be unreliable or ambiguous by recording of evidence, the said measurement or map cannot be discarded merely because some of the litigating sides are uncomfortable with the same.

5 The Trial Court has observed in paragraph 3 of the impugned order that until the measurement and map is not established to be ambiguous or unreliable, the said measurement and map cannot be discarded. The Trial Court has also observed that during the recording of evidence of the TILR, if it becomes clear that his measurement and map contain ambiguity, the request of the Plaintiffs for seeking the appointment of a Court Commissioner for re-measurement can be entertained. It is necessary to add that after the recording of evidence has commenced and subject to the observations of the Trial Court, any litigating side could move an application for re-measurement and such an application would then be decided on it's own merits.

6 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.

kps (**RAVINDRA V. GHUGE, J.**)