

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

WRIT PETITION NO. 6651 OF 2015

CHANDRAKANT KASHINATH DIKE AND OTHERS
VERSUS
SATYABHAMA VISHWANATH DIKE AND ANOTHER

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Advocate for Petitioners : Mr. Kulkarni Sanket S.
Advocate for Respondent 1 : Mr Patil Milind M.
(Beedkar)

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CORAM : V.K. JADHAV, J.
Dated: February 06, 2018

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PER COURT :-

1. Heard finally with consent at admission stage.
2. I find no substance in this writ petition.
3. Respondent No.1/original plaintiff instituted the suit for demarcation of boundaries, and removal of the encroachment. The petitioners/original defendants have strongly resisted the said suit by filing written statement. Initially, respondents/plaintiffs have filed an application exh.29 for appointment of the Court Commissioner and since the trial court has allowed the said application, petitioners/defendants have

approached to this Court by filing writ petition no.8871/2013. This Court has quashed and set aside the order for the reason that, before deciding the application exh.5, such an application exh.29 for appointment of the court commissioner was premature. However, this court has also granted liberty to the plaintiff to file an application for appointment of the Court commissioner at the appropriate time. Thereafter, respondents/plaintiffs have filed present application exh.78 for appointment of the Court Commissioner and the trial court has allowed the said application. Hence, this writ petition.

4. Learned counsel for the petitioner submits that, on the earlier occasion, application came to be rejected on the ground that, T.I. application was yet to be decided. However, even though, said application is not decided, the respondents/plaintiffs have filed application exh.78 for appointment of the court commissioner.

5. Learned counsel for respondents/original plaintiffs submits that, respondent no.1 plaintiff has filed purshis before the trial court that, T.I. application be considered alongwith the original suit. Even, learned counsel for respondents/plaintiffs, on instructions, submits that, respondents/plaintiffs would not press her T.I. application before disposal of the suit, even if, measurement report is submitted by the TILR office, as directed.

6. In view of the above, and for the reason that respondents/plaintiffs have instituted the suit for demarcation of the boundaries and for removal of encroachment, I find no fault in the impugned order. The learned Judge of the trial court has rightly allowed the application directing the T.I.L.R. office to measure the lands and submit the report. Writ Petition is hereby dismissed. No costs.

(V.K. JADHAV, J.)

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