

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

WRIT PETITION NO. 56 OF 2018

RADHABAI KANIRAM AADE
VERSUS
TUKARAM SOMLA AADE AND ANOTHER

...

Advocate for the Petitioner : Shri Sarvadnya Rohit S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the order dated 13.07.2016 passed by the Trial Court, by which, the application Exhibit-75 seeking the appointment of a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure in RCS No.75/2013, has been rejected.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. It is contended that it is always in the interest of the litigating sides that a joint measurement of the suit property as well as the properties of the Defendants, which are adjacent, is carried out since the fixing of the boundaries would assist the Court in concluding whether, there is any encroachment.

3 The learned Advocate for the Petitioner is right in contending

that a joint measurement of the properties of the litigating sides as long as they are adjacent to each other, has always been the view of the Court as it enables the parties to make out their respective cases and the Trial Court would be better assisted.

4 However, in the instant case, though there was never a joint measurement, on an application dated 13.12.2010 filed by the Petitioner, the Taluka Inspector of Land Records (TILR) measured the land Gat No.257 which is owned by the Plaintiff and on a subsequent application dated 16.08.2011, the measurement of the land Gat No.258, which belongs to the Defendants, was also carried out. 10 R of land is alleged to be encroached upon by the Defendants.

5 It requires no debate that when it comes to such measurements, which are on record and which are relied upon by the parties, unless by leading oral evidence, such measurements and maps, if any, are proved to be ambiguous or unreliable, these measurements cannot be discarded merely because they may subsequently appear to be uncomfortable to any party.

6 It is also well settled that the appointment of a Court Commissioner for causing local inspection under Section 75 r/w Order 26 Rule 9 is permissible after the recording of oral evidence has commenced. In the event, the litigating sides establish that earlier measurements are unreliable and ambiguous, any of the litigating sides would be eligible to

file an application for re-measurement after the recording of oral evidence has commenced. Such application can then be considered by the Trial Court on its own merits.

7 As such, since the impugned order cannot be termed as being perverse or erroneous, this Writ Petition is dismissed.

kps

(RAVINDRA V. GHUGE, J.)