

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

WRIT PETITION NO. 9908 OF 2015

LAXMAN NIVRUTTIRAO REDDY AND OTHERS
VERSUS
SHIVAJI BHANUDAS KOLI AND ANOTHER

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Advocate for Petitioners : Mr. Gunale V.D
Advocate for Respondents : Mr Patil B.N.

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CORAM : V.K. JADHAV, J.

Dated: April 25, 2018

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PER COURT :-

1. Learned counsel for the petitioners/original plaintiffs submits that, the trial court has passed the impugned order with the observations that though, petitioners/plaintiffs have pointed out that respondents/defendants have got measured their land on 12.6.2010 and it shows the encroachment over the suit land on the part of respondents/defendants, however, except bare words of the petitioners/plaintiffs, they have not produced any evidence on record to that effect and, accordingly, rejected the application seeking appointment of the Court commissioner. Learned counsel for the petitioners/original plaintiffs submits

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that, subsequent to passing of the impugned order, petitioners/plaintiffs have submitted all the relevant documents including the measurement map prepared by the then surveyor. Learned counsel submits that, petitioners may be granted liberty to file an application afresh for appointment of the Court Commissioner on the basis of the said documents already filed before the Court.

2. Learned counsel for respondents/defendants submits that, the petitioners/plaintiffs have not produced those documents at the time of passing of the impugned order by the trial court and, the trial court has thus rightly rejected the application.

3. It appears that, subsequent to the impugned order passed by the trial court, the petitioners/plaintiffs have filed the relevant documents on 9.9.2015. Copies of the same are also annexed with this writ petition at page no.42 to 50, which includes the measurement map. It further appears from the impugned order that trial

court has rejected the application mainly on the ground that except bare words of the petitioners/plaintiffs they have not produced any evidence on record that T.I.L.R. had shown 4H 95R land in possession of the defendants.

4. In view of the above, petitioners/plaintiffs may be given one more opportunity to substantiate his application seeking appointment of the Court Commissioner on the basis of documents those are produced before the Court on 9.9.2015 pertaining to the earlier measurement carried out at the instance of respondents/defendants. Hence, following order.

ORDER

- I. Writ petition is hereby partly allowed. No costs.
- II. The order passed below exh.65 dated 24.8.2015 by Jt. Civil Judge J.D. Latur in R.C.S.No. 480/2010 is hereby quashed and set aside.

- III. The trial court shall decide the application exh.65, afresh.
- IV. The petitioners/plaintiffs are at liberty to rely upon the documents those are produced on 9.9.2015 in respect of the earlier measurement carried out at the instance of other side.
- V. Writ Petition accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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