

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

WRIT PETITION NO. 12184 OF 2018
BAPURAO BHANUDAS WAGHMARE
VERSUS
AHOK RANGNATH PATEKAR

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Advocate for the Petitioner : Shri Deshmukh S A.
Advocate for the Respondent : Shri Kiran B Dantal.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 01st November, 2018

Per Court:

1 The Petitioner/ Defendant is aggrieved by the order dated 01.08.2018 passed by the Trial Court by which, the court commissioner has been appointed for the second time by allowing the application Exhibit-24 filed by the Respondent/ plaintiff in RCS No.179/2012.

2 I have heard the learned Advocate for the Petitioner on 30.10.2018, 31.10.2018 and again today. The learned Advocate for the sole Respondent supports the impugned order.

3 The Petitioner contends that when the court commissioner was earlier appointed, there is no necessity to appoint the court commissioner for the second time.

4 There can be no debate on this proposition for the reason that once the court commissioner is appointed and he has measured the lands and submitted the report of measurement and the map to the Court, the dispute with regard to the said map and measurement can be resolved by

examining the court commissioner and if it is proved that the report is unreliable, a second court commissioner could be appointed.

5 This instant case brings up a peculiar situation. After the court commissioner was appointed for carrying out the measurement of the lands Gat Nos.230 and 231, the said court commissioner has passed away after submission of his measurement. The litigating sides had disputed his measurement and as such, his examination in the court to decide the fate of the report was necessary. As the earlier court commissioner has passed away and no evidence could be led, the Trial Court allowed the application Exhibit 24 by ignoring the earlier measurement in the above stated peculiar facts.

6 The apprehension of the Petitioner is that after the second court commissioner places on record the measurement and the report, the Trial Court would also rely upon the earlier report.

7 The learned Advocate for the Respondent/ Plaintiff submits that this is not likely to happen as the said report will have to be ignored in view of the peculiar facts.

8 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition, being devoid of merit is, therefore, dismissed.