

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

WRIT PETITION NO.12112 OF 2018

Baban Shankar Chitnis

Petitioner

VERSUS

Ankush Laxman Shinde & anr.

Respondents

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Mr. S.S. Chapalgaonkar, Advocate for the petitioner

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 The petitioner-original plaintiff is aggrieved by the order dated 30.06.2018 by which the Trial Court has rejected application Exh.140 filed by the plaintiff in R.C.S. No.93/2008 seeking re-measurement of the suit property.

2 Learned Advocate for the petitioner has strenuously criticized the impugned order and submits that the trial Court has passed the said order without even considering the evidence adduced by the Court Commissioner. He draws my attention to the seven grounds formulated in the memo of petition to submit that this is a fit case for directing appointment of a Court Commissioner and for carrying out measurement of

the suit land. It is further submitted that if the examination and cross examination of the Court Commissioner is seen, it would indicate that there are several discrepancies and the Court Commissioner has failed to perform his duties.

3 I find from the record that in the pending R.C.S. No.93/2008, after the issues were cast on 08.08.2011, the plaintiff examined his first witness i.e. the measurement officer who had earlier measured the suit land. The record also indicates that as per order below Exh.19, an Advocate was appointed as a Court Commissioner who submitted his report at Exh.36. The plaintiff was not satisfied, so he moved another application Exh.37, which came to be allowed and the T.I.L.R., Kopargaon was appointed as a Court Commissioner for measuring the suit land again. The plaintiff was still not satisfied, so he again moved an application Exh.47 seeking re-measurement and the said application was rejected. Thereafter, the plaintiff proceeded with the recording of oral evidence. Application Exh.140 was then filed on 12.10.2015 which has been rejected by the impugned order.

4 The recording of oral evidence in the suit has been concluded as per the submissions of the learned Advocate.

5 In view of the peculiar facts as recorded above, there has been a measurement of the suit lands on two occasions. The suit is filed for seeking injunction. An Advocate was appointed as a Court Commissioner and his report is already before the Trial Court. Due to the dissatisfaction of the plaintiff, another application was filed at Exh.37 and the Court Commissioner was appointed for the second time. It appears that the plaintiff is not satisfied by the work done by any Court Commissioner. Exh.47 seeking a third appointment of a Court Commissioner was rejected.

6 In my view, it should be left to the Trial Court to consider as regards the reliability of the Court Commissioner's report. His measurement and his map is on record and the suit is purely for seeking injunction. I, therefore, do not find that the Trial Court has passed a perverse or an erroneous order rejecting the fourth request of the petitioner-plaintiff for appointment of a Court Commissioner, despite his third request seeking appointment of a Court Commissioner was rejected.

7 The petition being devoid of merits, is therefore dismissed.

[RAVINDRA V. GHUGE, J.]