

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

921 WRIT PETITION NO.13998 OF 2018

Uma Jayantilal Rathod and others

Petitioners.

Versus

Kartar Gopaldas Pamnani and others.

Respondents.

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Advocate for Petitioners : Mr. Shirsath P.B.

CORAM : N.M. JAMDAR, J.

Dated: 18 December 2018

PER COURT :-

1. By this petition under Article 227 of the Constitution of India, the petitioners seek to challenge the order of the learned Civil Judge appointing a Court Commissioner for carrying out the measurement, and the report submitted by the Court Commissioner.

2. The order is purely interlocutory. The contention of the learned counsel for the petitioners that there is no sanctioned lay-out and that the report submitted by the Commissioner is erroneous, are open for the petitioners to argue in the pending suit. As far as the contention of the petitioners that the Commissioner ought not have been appointed in the suit at all as it amounts to collection of

evidence, this court has taken a view in various decisions that in suit for removal of alleged encroachments revolving around ascertainment of the boundaries in the Government record, it is desirable to have a measurements carved out by the Survey Officer as a Court Commissioner. Further, it is not for ever error that the jurisdiction under Article 227 of the Constitution of India is to be exercised. If the learned Civil Judge has appointed a Court Commissioner considering the nature of the suit, this discretion cannot be considered as perverse, neither there is any error of jurisdiction. As far as the reliance placed on the decision of *Vijay s/o Shrawan Shende and others Vs. State of Maharashtra and others*¹ is concerned, the matter had arisen before this Court in a Second Appeal after conclusion of the trial and not at interlocutory stage, where the power of superintendence of this court was invoked. In the circumstances, keeping all the contentions of the petitioners open regarding the report of the Court Commissioner, writ petition is disposed of.

(N.M. Jamdar, J.)

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