

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

WRIT PETITION NO. 602 OF 2018

MADAN NARHARRAO KULKARNI
VERSUS
LAXMAN HARIBHAU SABLE AND ANOTHER

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Advocate for the Petitioner : Mrs.Smita S. Kulkarni.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the order dated 24.11.2017, by which, the Trial Court has rejected the application Exhibit-90 filed by the Petitioner seeking appointment of a Court Commissioner.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. The contention is that the boundary dispute exists in the pending suit. The measurement of the suit property and fixing of boundaries would assist the parties as well as the Trial Court in properly adjudicating the said suit. It is further contended that even if there was an earlier measurement, that measurement can be ignored as the boundaries are still disputed and hence, a re-measurement by appointment of a Court Commissioner would assist the Trial Court in

adjudicating the matter.

3 I find from the record that the Petitioner/ Plaintiff has admitted in the cross-examination that Gat No.125 was measured through the Taluka Inspector of Land Records (TILR) on 21.04.2010. The Map is on record along with the measurement. The said documents have been exhibited. The measurement and map indicate that the boundaries of the suit property have been fixed. Based on the evidence recorded, the Trial Court concluded that the application Exhibit-90 was filed for the purpose of collecting evidence.

4 It requires no debate that when the suit property has already been measured and the measurement and map are on record, the litigating sides have the liberty to examine/ cross examine the TILR, who has measured the land. If on the basis of evidence, it is established before the Trial Court that the measurement and map are unreliable and are ambiguous, the request of the litigating sides for re-measurement could be entertained. In the instant case, the Trial Court has not concluded that earlier measurement and map are unreliable and ambiguous.

5 As such, I do not find that the impugned order could be termed as being perverse or erroneous. The Writ Petition being devoid of merit is, therefore, dismissed.