

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

WRIT PETITION NO. 169 OF 2018

DATTU YADAV JONDHALE AND OTHERS
VERSUS
SUNDARABAI SAMPAT JONDHALE AND OTHERS

...

Advocate for the Petitioners : Shri Dixit Satyajeet S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th January, 2018

Per Court:

1 The Petitioners are aggrieved by the order dated 30.08.2017 passed by the Trial Court, by which, the application Exhibit-41 seeking appointment of a Court Commissioner for the second time, has been rejected.

2 I have considered the strenuous submissions of Shri Dixit, learned Advocate for the Petitioners and have gone through the petition paper book with his assistance.

3 In Regular Civil Suit No.325/2011, the issues have still not been framed. Yet, the Court Commissioner was appointed by the order of the Trial Court dated 18.03.2013. The said Court Commissioner has placed on record the measurement of the suit properties and the map indicating the positions of the suit properties.

4 The grievance of the Petitioners/ original Plaintiffs is that the map and the measurement have not been properly drawn by the Court Commissioner. The map is defective. The road running from East to West, which divides the suit property, has not been indicated in the map. The village map runs counter to the map prepared by the Court Commissioner.

5 It is settled law that if any party is aggrieved by the measurement carried out by the Court Commissioner and/or the map placed on record, the Court Commissioner can be examined and the aggrieved party can establish before the Trial Court that the measurements and the maps are unreliable and deserve to be discarded. If the Trial Court concludes that the measurements and the maps deserve to be discarded, for the reasons to be recorded, it may consider the appointment of the second Court Commissioner as the exercise undertaken by the first Court Commissioner is rendered futile. Merely because one of the litigating sides is not satisfied with the map or measurement, cannot be a ground for appointment of the Court Commissioner for the second time.

6 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.