

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 755 OF 2018

LAHU VITTHAL GAIKWAD AND ANOTHER  
VERSUS  
SAHADU RAMRAO WARKAR AND OTHERS

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Advocate for Petitioners : Shri Chapalgaonkar Shailesh S.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: January 24, 2018

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 20.9.2017, by which, application Exhibit 24 filed by the plaintiffs seeking appointment of a Court Commissioner in RCS No.348 of 2010 has been rejected.

2. I have considered the strenuous submissions of the learned counsel for the petitioners who has criticized the impugned order. My attention is drawn to the eight grounds formulated in the memo of the petition.

3. The litigating sides earlier were involved in RCS No.457 of 2002. The boundary dispute was resolved after the suit property was measured. The plaintiffs now contend that the measurement that

was carried out in the earlier suit was based on erroneous record. I do not find that the plaintiffs can be permitted to take this stand when the trial Court has relied upon the earlier measurements while dealing with the earlier suit. Merely because it is convenient for the plaintiffs to contend in the present suit that the earlier measurements were wrong, cannot be a sustainable argument.

4. The present suit has been filed for seeking injunctory orders against the defendants and in the event of the Court noticing any encroachment, the said encroachment should be removed and the possession of the encroached portion should be handed over to the plaintiffs. In this backdrop, in my view, the plaintiffs will have to prove the area of encroachment and after leading evidence and upon identifying the encroached portion, they would be entitled to a relief under prayer clause (B) set out in the petition.

5. I find that the trial Court was justified in concluding in the light of the law laid down by this Court in the matter of Dnyandeo Salakhe Vs. Dagadu Inamdar [2017 (3) Mah.L.J. 314], that appointing a Court Commissioner to search for the encroachment and remeasure the suit property in the backdrop of the earlier measurement cannot be termed as being perverse or erroneous.

6. This petition. being devoid of merits is, therefore, dismissed.

( RAVINDRA V. GHUGE, J. )

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akl/d