

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 971 OF 2014

Taradas Shivram Varkar (Since decd.) Through LRs. V/s. Dhondiram Dadu Gavali (Since decd.) Through LRs. & Ors.		Petitioner Respondents
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- Mr.N.V. Bandiwadekar i/b. Mr.Sandeep S. Koregave for the Petitioner.
- Mr.Prashant Bhavake for Respondent Nos.1A to 1D.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 16th August 2013 passed by the 17th Joint Civil Judge, Junior Division, Kolhapur, below the application at Exhibit-62 in Regular Civil Suit No.111 of 2012.

3] The application at Exhibit-62 was filed by the present Petitioner, who is the original Plaintiff before the trial Court for appointment of the T.I.L.R. as the Court Commissioner under Order-26 Rule-9 of the Code of Civil Procedure, 1908 (*for short, "C.P.C."*) for carrying out measurement of the suit property.

4] This application was resisted by the Respondents and the trial Court has vide its impugned order rejected the said application.

5] Perusal of the order passed by the trial Court clearly goes to show that the suit land bearing Survey No.32/2 was measured three times by the Officer of the rank of T.I.L.R. at the instance of the Petitioner and the Respondents, and the measurements carried out by them are already on record. As a matter of fact, the suit of the Petitioner is also based on the measurement done by the T.I.L.R. on 30th April, 2000. In such situation, if the Petitioner himself is relying upon the measurement map drawn by the T.I.L.R. on 30th April 2000 and no grievance is raised against the said measurement, at least from the point of view of the Petitioner, no fresh measurement of the suit land is necessary and therefore, the trial Court has rightly held that the reappointment of the T.I.L.R. as Court Commissioner is not at all necessary.

6] Moreover, as the Petitioner was also seeking the measurement of the land bearing survey No.32/2A and 32/C which are not subject matter of the present suit, on that count also, the trial Court was justified in rejecting the said application. This Writ Petition therefore being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]