

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

WRIT PETITION NO.3288 OF 2018

NARAYAN DATTA LADGE AND ANOTHER
VERSUS
GOVIND RAMAJI DHALE AND OTHERS

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Advocate for the Petitioners : Shri Uttarwar Pavan P.
Advocate for Respondents 1 and 2 : Shri Avinash D. Hande.
Advocate for Respondent 3 : Shri Panchal Shrinivas H.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 12th February, 2019

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 10.07.2017 by which, the Trial Court has rejected the application Exhibit 74 filed by the Plaintiffs seeking appointment of the court commissioner for re-measurement of the suit land in RCS No.123/2013.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order. It is submitted that the Petitioners/ Plaintiffs were only seeking re-measurement of the suit land. No harm or loss would be caused to any of the litigating sides if such re-measurement is permitted.

3 The learned Advocates for the contesting Respondents oppose this petition. It is contended that the Trial Court has gone through the evidence before it and has concluded that insofar as the suit property is concerned, it does not require the assistance of the court commissioner.

4 I find from the record that the Plaintiffs have specifically pleaded that the land was measured by the Taluka Inspector of Land Records (TILR), Loha. On the basis of the TILR's measurement and map, which is reflected in the report, the Plaintiffs had sought recovery of possession of 80 R land from the Defendants. In fact, it were the Defendants who were opposing the report of the Court Commissioner. The Trial Court has further recorded that considering the oral and documentary evidence and the report of the Court Commissioner, the suit land can be easily identified.

5 Considering the above, I do not find that the impugned order rejecting the application Exhibit 74 could be termed as being perverse or erroneous.

6 The Trial Court has, however, saddled costs upon of the Plaintiffs for filing the application Exhibit 74. I do not find that the Plaintiffs can be said to have acted with an ulterior motive. I do not find that the laches are attributable to the conduct of the Plaintiffs. As such, the direction of the Trial Court imposing costs upon the Petitioners/ Plaintiffs is quashed and set aside. Rest of the impugned order dated 10.07.2017 stands sustained.

7 This Writ Petition is, accordingly, disposed of.