

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

WRIT PETITION NO. 9651 OF 2019

**PRAKASH VENKATRAO MAHAJAN
VERSUS
SARANGI PRAVIN MAHAJAN**

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Advocate for the Petitioner : Shri P. S. Paranjape
Advocate for the Respondent : Shri S. H. Pathan and
Ms. B. A. Rokade

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th SEPTEMBER, 2019.

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PER COURT :

1. I have considered the submissions of the learned Advocates for the petitioner / original defendant and the respondent / original plaintiff, in Regular Civil Suit No. 231/2018. With their assistance, I have gone through the petition paper book.

2. It appears from the plaint that the plaintiff desires the measurement of the suit property, demarcation of the boundaries and fixation of such boundaries. This suit is an offshoot of a purported settlement out of the Court pursuant to which the plaintiff had withdrawn the earlier RCS No.

332/2011.

3. The petitioner / defendant had moved application Exhibit 41 before the Trial Court seeking rejection of the plaint under Order VII Rule 11 (a, b and d) of the Code of Civil Procedure. By the impugned order dated 14/03/2019, the Trial Court has rejected Exhibit 41.

4. The learned Advocates for the defendant and plaintiff respectively, submit on instructions from both of them being present in the Court that the Trial Court may appoint a TILR to carry out the measurement of the suit property land Survey No. 220/1 admeasuring 72 R. The parties would remain present when the measurement is carried out and they would abide by the measurement and the map presented by the TILR. With the satisfaction of the parties, the suit can then be disposed off in view of such measurements. It is stated that if either of the parties is aggrieved by such measurement, further steps would be taken in the suit for the redressal of their views.

5. In view of the above, this petition is disposed off.

There shall be no interference in the impugned order dated 14/03/2019. The Trial Court would proceed to appoint the TILR Osmanabad, as a court commissioner by the consent of the parties. Both the parties shall bear the costs of the TILR in equal proportions. This order is being passed in the peculiar facts and circumstances of the case.

6. The Trial Court would mention in its order in the TILR that the TILR would carry out the measurement of the suit property on 30/09/2019 at 2.00 p.m. The litigating sides or their representatives duly authorized would remain present on the date and time and in their presence, the TILR would carry out such measurement by resorting to the latest technology described as Electronic Total Station Machine. This measurement shall be in tune with the last document of settlement signed by both the parties on 23/01/2018 and on the basis of which the earlier suit was withdrawn.

7. After the TILR submits the measurement, fixation of boundaries and the map alongwith a report if necessary, before the Trial Court, the parties would be at liberty to express their

consent before the Trial Court and pursuant thereto, the Trial Court would proceed to dispose off RCS No. 231/2018. In the event of any dispute between the parties, the Trial Court would proceed with the suit as is required to be done in law.

(RAVINDRA V. GHUGE, J.)

shp/-