

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

WRIT PETITION NO.11775 OF 2019

FAISAL KHALIL SHAIKH AND ANOTHER
VERSUS
RATNA SANTOSH SARODE

...

Advocate for the Petitioners : Shri Patil Vinod Prakash
Advocate for the Respondent : Shri Y.H.Jadhav h/f Shri G.A.Nagori

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 24th September, 2019

Per Court:

1 The petitioners are the original defendants, who are aggrieved by the order dated 12.07.2019 passed by the Trial Court by which, the application exhibit 34 filed by the plaintiff seeking appointment of the court commissioner in RCS No.118/2015, has been allowed.

2 The learned advocate for the petitioners has strenuously criticized the impugned order. Reliance is placed upon the four grounds formulated in the memo of the petition. It is contended that the impugned order amounts to granting liberty to the plaintiff to collect evidence. It is informed by the learned advocate for the petitioners, on instructions, that the recording of oral evidence in the suit has concluded.

3 Exhibit 34 indicates that the plaintiff has merely prayed for the joint measurement of the suit properties. Besides the said prayer, there is no other request made insofar as the appointment of the court commissioner is concerned. It is crystallized law that firstly, the court commissioner can be appointed after the recording of oral evidence has concluded and secondly, the court commissioner can be appointed for the joint measurement of the suit properties. This would not amount to collecting evidence.

4 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

5 Needless to state, after the court commissioner submits the measurement, his report and map, any aggrieved party can take recourse to law as is permitted.