

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

WRIT PETITION NO. 1 OF 2019

MAYA BABAN ADHAV
VERSUS
ASHOK PRABHAKAR SHELKE AND OTHERS

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Advocate for the Petitioner : Shri A. V. Rakh
Advocate for Respondent Nos. 1 to 3 : Shri R. C. Misal h/f.
Shri A. S. Sawant

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th AUGUST, 2019.

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PER COURT :

1. The petitioner/original defendant No.1 is aggrieved by the order dated 17/11/2018, by which, the Trial Court has rejected the application Exhibit 21 filed in Regular Civil Suit No. 154/2015 seeking re-measurement of the land or Nimtana measurement.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order in the light of the 16 grounds formulated in the memo of the petition.

3. The record reveals that the Trial Court had directed the

appointment of a court commissioner by order dated 30/03/2016, below application Exhibit 16. This order, though not challenged, is obviously delivered at a pre-mature stage. This Court has consistently held that a court commissioner should not be appointed before the recording of oral evidence is completed. Some of the orders passed by this Court are as under :-

- (a) Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.
- (b) *Dnyandeo Vithal Salke & others vs. Dagdu Kadar Inamdar, 2017(3) Mh.L.J. 314.*
- (c) *Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No. 4756/2014 (Aurangabad Bench) decided on 08/12/2014*
- (e) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017*
- (f) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on*

04/06/2018,

(g) Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017,(Bombay Bench), decided on 23/01/2018,

(h) Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018,(Aurangabad Bench), decided on 29/01/2018.

4. Notwithstanding the above, the contention of the petitioner is that the joint properties of the litigating sides were not measured and it was only Gat No. 65 belonging to the plaintiff that was measured. The measurement was posted at 09.00 a.m. on 16/12/2018. The TILR arrived at 2.00 p.m. and the petitioner had, by that time, left the property to attend a marriage. She returned at 3.30 p.m. and objected that the TILR was measuring only the land of the plaintiff. There were directions to measure the lands of both the litigating sides. This was not done.

5. The petitioner, therefore, filed application Exhibit 21 seeking appointment of a Deputy Superintendent of Land

Records Parner to once again measure the entire properties of the litigating sides.

6. I am of the view that after the measurement of a property is completed, either of the parties is at liberty to examine the court commissioner if the said party is not satisfied with the measurement. The law allows such a litigant to lead evidence and prove before the Trial Court that the measurement is faulty or unreliable and undependable. After the evidence establishes that the report of the court commissioner is not reliable, the Trial Court is at liberty to permit a re-measurement. This has to be done after the recording of oral evidence is concluded.

7. The Trial Court has recorded in the impugned order that defendant No.1 petitioner herein is at liberty to lead evidence and prove that the measurement is faulty and unreliable.

8. In the above backdrop, the petitioner can surely lead evidence to establish that the measurement is faulty or

unreliable.

9. This petition, being devoid of merit is, therefore,
dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-