

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

29 WRIT PETITION NO.2368 OF 2020

LAXMAN RADHAKISAN BHAGAT
VERSUS
SUNDARRAO DAGDUBA SHINDE

...
Advocate for Petitioner : Mr. Mohekar Ganesh V.

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CORAM : ROHIT B. DEO, J.

Date: February 10, 2020
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PER COURT :-

1 The petitioner who is the defendant in a suit brought for declaration, removal of encroachment and recovery of possession is aggrieved by order dated 7.11.2019 rendered by the 3rd Joint Civil Judge, Junior Division, Majalgaon whereby the application preferred under order 26 rule 9 of CPC for appointment of District Superintendent of Land Records as Court Commissioner for measuring the suit property for ascertaining the actual extent of encroachment is rejected.

2 The Trial Court noted that the suit property is already measured once by TILR who is examined in the Court and is further cross-examined by the petitioner – defendant. The measurement report and map filed by the TILR are on record. The petitioner – defendant is seeking appointment of another Court Commissioner even before adducing evidence. The Trial

Court has observed and rightly so that the correctness or otherwise of the measurement carried out by the TILR can be addressed at the time of final arguments.

3 I do not see any reason to interfere in writ jurisdiction as the Trial Court has rightly observed that the application is moved at very belated stage and no purpose would be served by allowing the application, matter being very old. If the trial Court feels on appreciating the evidence on record that it would be necessary to remeasure the land and appoint another commissioner, the Trial Court will take the call at an appropriate stage.

4 The petition is dismissed.

(ROHIT B. DEO, J.)

vbd