

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

936 WRIT PETITION NO.2210 OF 2019

LAXAMAN SUKHDEO AVHAD AND OTHERS.
VERSUS
PARSHRAM PANDURANG AVHAD AND OTHERS.

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Advocate for Petitioners : Mr Kulkarni Sanket S.
Advocate for Respondents 1-5 : Mr. Pradhan Laxman K,
Mr. Tripathi Akhilesh C. For R 7,8,9

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CORAM : V.K. JADHAV, J.
Dated : February 11, 2021

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PER COURT :-

1. Heard both sides.
2. The petitioners/plaintiffs in terms of his prayer clause no.2 in the suit, which speaks about the boundary dispute, filed an application Exhibit 26 in the pending civil suit for appointment of the Court Commissioner. The Trial Court has rejected the said application on the ground that this is not a suit for possession of encroached area and by way of this application, the plaintiff is claiming main relief of the measurement of the suit property at interim stage.

aaa/-

3. It is well settled that in case of the boundary dispute in any form, the plaintiff is entitled for appointment of the Court Commissioner to measure the land.

4. The learned counsel appearing for the respondents has also not disputed this legal position.

5. In view of the same, even if the trial court's order is set aside mainly on the said ground, however, I am informed that the plaintiffs have not examined any witness, so far. In view of the same, the petitioners would be at liberty to file an application for appointment of the Court Commissioner, for which the other side has given no objection, after his evidence is recorded, and upon filing of the same, the trial court shall decide the said application on its own merits, without getting perturbed by the order on earlier application exh.26 impugned in this writ petition. Writ Petition is accordingly disposed off. No costs.

(V.K. JADHAV, J.)

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aaa/-