

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

975 WRIT PETITION NO. 2383 OF 2021

SHAIKH IBRAHIM S/O SK. SAMAD AND OTHERS
VERSUS
ASHOK S/O CHINTAMAN PAWAR AND OTHERS

.....
Advocate for Petitioners : Mr. Kingaonkar Nandkumar Y.

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CORAM : V. K. JADHAV, J.
DATED : 5TH FEBRUARY, 2021

PER COURT :-

1. Heard learned counsel for the petitioners. The petitioners are the original plaintiffs in a pending suit of the year 2017. The petitioners filed application Exhibit 31 for re-measurement of the land by appointing another Court Commissioner. By the impugned order below Exhibit 31, the trial court has rejected the said application.

2. Learned counsel for the petitioners has vehemently submitted that though the T.I.L.R. was appointed as Court Commissioner by an order passed below Exhibit 5 on 01.07.2017 and though he has shown the encroachment in the measurement map, however, he has failed to specify the

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exact spot of the encroachment of 22 Gunthas along with the other necessary details.

3. On perusal of the impugned order, it appears that the trial court has observed that it is premature at this stage to appoint another Court Commissioner to re-measure the land. The trial court has further observed that at this stage when the evidence of the said Court Commissioner is not recorded, it is not desirable to form any opinion about the measurement.

4. In view of the above, the Writ Petition is hereby dismissed with liberty to the petitioner to file an application for appointment of Court Commissioner afresh after examination and cross-examination of the said Court Commissioner is over. Upon filing such application, the trial court shall decide the said application on its own merits without referring the earlier order passed below Exhibit 31.

(V. K. JADHAV, J.)

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