

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

919 WRIT PETITION NO.10058 OF 2013

APPARAO GUNAJI SHINDE
VERSUS
RANBA GUNAJI SHINDE DIED L.RS KISHAN AND
OTHERS

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Advocate for Petitioner : Mr. Tandale P.R.
Advocate for Respondent 2 : Mr Vinayak Solanke h/f R
D Biradar

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

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PER COURT :-

1. Respondent no.1A though duly served with the notice through paper publication, none appears for him.

2. With consent of the respective parties, heard finally at admission stage.

3. The petitioner is the original plaintiff. The petitioner has instituted a suit bearing RCS No.365 of 2008 for recovery of possession by removing the encroachment. Before institution of the suit, the land was measured through TILR office and, in the map drawn by the surveyor, encroached portion has been

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specifically shown. The petitioner/plaintiff has examined the said surveyor of the T.I.L.R. office as a witness no.2 and, inadvertently, even though said surveyor was examined as a witness of the petitioner/plaintiff, the measurement map was not exhibited. Thus, the petitioner/plaintiff has filed an application exh.70 for recalling the said witness only to the extent of exhibiting the said measurement map. Trial court has rejected the said application.

4. It appears that trial court has rejected the application on two grounds. Firstly the petitioner/plaintiff wanted to fill up the lacuna by examining the said witness and, secondly, the petitioner/plaintiff has filed the said application belatedly i.e. after examination of the defendant's witness is over. However, I do not find any justifiable reason for rejection of the application filed by the petitioner/plaintiff. The petitioner/plaintiff has filed said application exhibit 70 only to the extent of exhibiting the measurement map. It is not disputed that the person, who has prepared the map i.e. the

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surveyor of the TILR office was examined by the petitioner/plaintiff as a witness no.2. In view of the same, that is a mere formality to exhibit the measurement map prepared by the said witness. In the result, I am inclined to allow this writ petition. Hence, I proceed to pass the following order.

O R D E R

- I. Writ Petition is hereby allowed in terms of prayer clause '**A**'.
- II. Writ petition accordingly disposed off. No costs.

(V.K. JADHAV, J.)

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