

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13341 OF 2021
(Anil Anandrao Jadhav Vs. Tirsing Shyamsing Rajput and another)

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Mr. P.N. Nagargoje, Advocate holding for Mr. D.B. Thoke,
Advocate for the petitioner

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CORAM : MANGESH S. PATIL, J.

DATE : 10.12.2021

PER COURT :

The petitioner, who is the original defendant, is aggrieved and dissatisfied by the rejection of his application for appointment of a court commissioner.

2. I have heard the learned Advocate for the petitioner. The petitioner inspite of having not preferred any counter claim and even having not made any attempt to verify independently as to if really the respondent/plaintiff has encroached over his property as alleged in his written statement, has made an attempt to collect the evidence through a court commissioner. Since it is a suit for possession of the encroached portion, burden is on the respondent/plaintiff to establish the fact. Even if the private measurement carried out at the instance of the respondent/plaintiff is not agreeable to the petitioner/defendant, the surveyor through whom the former has got the property measured, would be open for the

cross-examination at the instance of the petitioner. Bearing in mind all these facts and circumstances, when admittedly it is the respondent/plaintiff, who has started leading the evidence, I find no error or illegality in the order passed by the trial court in rejecting the application (Exh-41) of the petitioner for appointment of the court commissioner for carrying out measurement.

3. The Writ Petition is dismissed in limine.

[MANGESH S. PATIL]
JUDGE

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