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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.620 OF 2020

Uttam Mangaji Kale and Others

PETITIONERS

VERSUS

Subhash Baburao Mhaske and Others

RESPONDENTS

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Mr. Dattraya R. Markad, Advocate for the petitioners

Mrs. V. S. Chaudhari, AGP for respondent - State

Mr. R. S. Kasar, Advocate for respondents No. 1 to 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th DECEMBER, 2021

ORDER :

1. This petition impugns order dated 20th August, 2019 passed by the learned 14th Joint Civil Judge, Senior Division, Ahmednagar below Exhibit-30 in Regular Civil Suit No.319 of 2017, whereby application filed by the petitioners under Order XXVI, Rule 9 of the Civil Procedure Code for appointment of Court Commissioner is rejected.

2. The petitioners are the original plaintiffs, who filed said application requesting to appoint Deputy Superintendent of Land Records, Ahmednagar as Court Commissioner for carrying out measurement of land Gut No.190/3 situated at village

Madadgaon, Taluka and District – Ahmednagar with direction to prepare a map and to fix its four boundaries.

3. As per record, earlier, twice the plaintiffs have got the suit property measured. Even the defendants have got their property measured from Taluka Inspector of Land Records, Ahmednagar, initially in Nimatandar and thereafter in Super Nimatandar measurement. In measurement No. 3199/11, defendants' land Gut No. 198 was measured and it was found that their house and well are situated within their land itself. In the said measurement, no encroachment on the part of the defendants was noticed towards southern side of their land on the old Jamkhed road or on the suit property. In measurement No. 8/11 dated 4th November, 2011, conducted at the behest of the plaintiffs, it was revealed that the plaintiffs themselves have encroached upon towards northern side of their land on old Jamkhed road to the extent of 66 *Are* and as per the map, the plaintiffs have taken the entire road under their cultivation. Even the well of the plaintiffs is shown on old Jamkhed road. In this map also, no encroachment on the part of the defendants is shown on the Jamkhed Road.

4. Thus, it is, therefore, clear from the said measurements that the defendants have not encroached on the suit property, as

is claimed by the plaintiffs.

5. In the light of these facts, the Trial Court has rightly rejected the application filed by the plaintiffs – petitioners by giving cogent reasons and by holding that if the application filed by the plaintiffs is granted, it would amount to granting final relief at the interim stage. No illegality or perversity is found in the order impugned in the writ petition. Writ petition being devoid of any merits, is dismissed.

6. It is made clear that the observations made hereinabove are *prima facie* in nature and shall not influence the learned Trial Judge while deciding the suit.

[NITIN B. SURYAWANSHI]
JUDGE