

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

WRIT PETITION NO.1820 OF 2020

**SANDESH KANHAIYYALAL MUTHA AND ANOTHER
VERSUS
PRABHAVATIBAI ASHOK RANDHE**

...
Advocate for Petitioners : Mr. Ajit B. Kadethankar
Advocate for Respondent : Ms. P. V. Bodkhe
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th FEBRUARY, 2022

PER COURT :

1. This petition challenges the order dated 12-11-2019, passed by the learned Joint Civil Judge, Junior Division, Paithan, below Exhibit-32 in R.C.S. No.68/2009, thereby allowing the application filed by the respondent – plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure.

2. Having heard the rival submissions of the respective learned advocates representing the petitioners and the respondent, and on perusal of the impugned order, it is clear that the suit is based on measurement report dated 14-06-2005. The contention of the plaintiff is that she purchased the suit land admeasuring 1 Acre 25 Gunthas from defendant No.2 (i.e. petitioner No.2 herein) and after the measurement she came to know that 17 Gunthas land is less in her possession. The suit is filed for possession of the 17 Gunthas land. Earlier, the surveyor measured the land bearing Survey No.301/01 but the said measurement map does not show that 17 Gunthas land is in whose possession. In that

view of the matter, the plaintiff filed application seeking joint measurement of Survey Nos. 301/01 and 301/02.

3. The trial Court has recorded a finding that it is not necessary to remeasure the suit land by the same authority. However, the joint measurement of lands is necessary, hence, appointment of Court Commissioner is necessary to resolve all the controversies between the parties and the dispute cannot be resolved on the basis of oral evidence. In terms of Rule 9 of Order XXVI, local investigation of lands is necessary for elucidating the matter in dispute.

4. The learned advocate for respondent strenuously opposed the petition on the ground that appointment of Court Commissioner is prayed at premature stage and the trial Court ought to have rejected the same. I do not agree with the said submission. In view of the reasons assigned by the trial Court in the impugned order that, the dispute cannot be resolved on the basis of oral evidence and appointment of Court Commissioner is necessary to resolve the controversies between the parties, I do not find any illegality or perversity in the order passed by the trial Court.

5. Writ petition, being devoid of merit, is dismissed. No costs.

6. Since the suit is of the year 2009, the trial Court shall expedite the suit.

(NITIN B. SURYAWANSHI, J.)