

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1495 OF 2022

BABAN SUKHDEO GAIKWAD AND ANOTHER
VERSUS
ANANDIBAI SHESHRAO GAIKWAD

Advocate for Petitioners : Mr. Mayur G. Deokate
Mr. S.B. Bhapkar for Respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st MARCH, 2022

ORDER :

1. The Petitioner is aggrieved by the order passed by the Civil Judge Junior Division, Jafrabad, below Exhibit-14 in Regular Civil Suit No. 187/2019, thereby rejecting the application filed by the Petitioner under Order XXVI Rule 10.

2. After hearing the rival submissions of the respective advocates, it is clear that temporary injunction application is yet to be decided, so also, the parties are yet to lead evidence. In that view of the matter, the Trial Court was right in coming to the conclusion that at

this stage, it is not proper to allow the application for measurement filed by the Petitioner.

3. Since the dispute is about the encroachment and the Trial Court in the impugned order has observed that in one of the sale deed either of the plaintiff or the defendant incorrect boundary is mentioned. In that view of the matter, at the time of recording of evidence, if either of the parties move an application for appointment of Court Commissioner for measurement of the suit property, since this a suit for permanent injunction and counter claim for removal of encroachment, the Trial Court shall consider the said application at that stage on its own merits. With these directions, the writ petition is disposed of.

4. Ad-interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE