

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

916 WRIT PETITION NO.1873 OF 2021

SANTARAM BAPURAO PATKAL
VERSUS
BHAUSAHEB BABA GORE

...
Advocate for Petitioner : Mr. Gaikwad Pramod S
Mr.Kakde Yuvraj V., Adv. for Respondent sole

CORAM : PRITHVIRAJ K. CHAVAN, J.
DATE : 29th March, 2022.

PER COURT :-

1. Heard learned Counsel for petitioner and respondent finally at the stage of admission.
2. In the backdrop of the matter, this Court (Coram: V.K.Jadhav, J.) on 30th January, 2022, observed thus, -

- "1. Heard.
2. The T.I.L.R. was appointed as a Court Commissioner under the orders of the court. It appears that the Court Commissioner has carried out the measurement and submitted his report to the Court. The petitioner-plaintiff has filed an application Exh. 52 for examination of Court Commissioner in the court. In para 5 of the impugned order, the trial court has referred the report of the Court Commissioner dated 21.12.2015. However, in the copy of application Exh. 52 (page No. 34-A) there is no mention about the said report of the Court Commissioner. It is not clear as to why the trial court has given reference to the said Commissioner's report of the year 2015.
3. In view of above, issue notice to the respondents, returnable on 1.3.2021"

(2)

3. It is apparent from the perusal of the impugned order, more particularly para 5, that the learned Civil Judge, Junior Division, Shevgaon, had referred to the measurement No.16/29/12 - 2014 dated 21st December, 2015, which is not the application or prayer by the plaintiff moved below Exhibit-52 on 18th December, 2019. The petitioner-plaintiff had simply prayed for examining the Court Commissioner in respect of the measurement No.8/2017. The impugned order is *ex-facie* illegal and, therefore, is set aside. The matter is remanded back to the Trial court to decide the application below Exh. 52 afresh after giving due opportunities to the respective parties.

4. The petition stands disposed of in aforesaid terms with no order as to costs.

(PRITHVIRAJ K. CHAVAN, J.)

BDV