

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

WRIT PETITION NO.2735 OF 2019

**KAILAS MURLIDHARRAO SUSLADE AND OTHERS
VERSUS
MACHINDRA VITTHAL JADHAV AND ANOTHER**

...
Advocate for Petitioners : Mr. A. R. Deokate h/f Mr. L. R. Tade
Advocate for Respondents No.1 & 2 : Mr. P. F. Patni
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th JULY, 2022

PER COURT :

1. The petitioners are aggrieved by the order dated 04/01/2019 passed by learned Joint Civil Judge Junior Division, Kannad, below Exhibit-74, in Regular Civil Suit No.189/2009.
2. Admittedly, the trial Court appointed Court Commissioner in terms of directions of the District Court. Court Commissioner issued notice to the petitioners/defendants at the time of measurement, preparing map and conducting panchanama. The defendants have made endorsement on the said notice that they accept the measurement, map and panchanama. Notice containing endorsement of defendants is placed on record by Court Commissioner alongwith his report.
3. After the Court Commissioner submitted his report in the trial Court, respondents/plaintiffs filed application Exhibit-74 objecting to the Court Commissioner's report and requesting for appointment of District Superintendent of Land Records, Aurangabad as Court Commissioner. Learned advocate for petitioners gave 'no objection' to the said application. By the

impugned order, trial Court appointed Superintendent of Land Records, Aurangabad as Court Commissioner for measurement of Gut Nos. 19 and 4 situated at village Ruikheda, Taluka Kannad, District Aurangabad. Hence, the present petition.

4. Court Commissioner is yet to be examined in the trial Court. Respondents during cross-examination of Court Commissioner, can bring on record mistakes and/or faults in measurement, which according to them have been committed by Court Commissioner. Therefore, the present application, since is filed before examination of Court Commissioner, is premature and should not have been entertained by the trial Court.

5. In the result, writ petition is allowed. Impugned order dated 04/01/2019 passed by learned Joint Civil Judge Junior Division, Kannad below Exhibit-74 in Regular Civil Suit No.189/2009, is hereby quashed and set aside.

6. Parties are at liberty to prefer application for appointment of Court Commissioner, after recording Court Commissioner's evidence. If such application is filed, the same shall be considered on its own merits, without being influenced by the order impugned in the present petition.

(NITIN B. SURYAWANSHI, J.)