

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

WRIT PETITION NO.11809 OF 2021

CHANDRAKALA BALIRAM LAKAL

... PETITIONER

VERSUS

TATYABA SITARAM BHALERAO

... RESPONDENT

...
Mr. M. U. Shelke, Advocate for the Petitioner
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 3rd Joint Civil Judge, Senior Division, Osmanabad below Exhibit-53, in Regular Civil Suit No.371/2013, thereby rejecting the application filed by the petitioner for appointment of Court Commissioner.
2. Heard the learned Advocate for the petitioner. None appears for the respondent, though served.
3. Admittedly, the suit property is measured by the Court Commissioner and map drawn by the Court Commissioner is placed on record. It is the case of the petitioner that in the measurement report and map submitted by the Court Commissioner, the

boundaries of the suit land are wrongly shown. In the map, the acquired portion is shown on the southern side. However, in fact, the acquired portion is northern side area at western side. Thus, the map is showing wrong direction of the acquired portion. Therefore, re-measurement be carried out.

4. The trial Court has rejected the said application holding that whether the measurement carried out is right or wrong can be ascertained only after recording evidence of the Court Commissioner. Bare statement of the petitioner that the measurement carried out by the Competent Officer is wrong, cannot be accepted. If at all factual position is different from map, it can be ascertained in the evidence from that officer.

5. Since the Court Commissioner who has measured the suit land and prepared the map is yet to enter witness box for giving evidence and as the Petitioner has right to cross-examine him and bring before the Court that the measurement carried out and the map prepared by him is wrong or factually incorrect, this Court, at this stage, is not inclined to interfere in the order impugned in the present writ petition.

6. If necessary the petitioner is at liberty to prefer such application after the evidence of the Court Commissioner is

recorded. The trial Court shall consider the said application on its own merits without being influenced by the rejection of present application filed by the petitioner.

7. With these observations, writ petition is dismissed.

[NITIN B. SURYAWANSHI, J.]

Sameer