

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

WRIT PETITION NO.3692 OF 2021

RAMRAO GANPATI PATIL

VERSUS

SHAHA AHAMED HUSSAIN SHA AND OTHERS

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Advocate for Petitioner : Mr. Sunil V. Kurundkar

Advocate for Respondents : Mr. G. G. Surywanshi

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th June, 2022

ORDER :

1. The petitioner is aggrieved by the order dated 15-06-2020 passed by the learned Joint Civil Judge, Junior Division, Biloli below Exhibit-44 in R.C.S No.75/2017, thereby rejecting the application filed by the petitioner for appointment of Court Commissioner.
2. The petitioner/original plaintiff has filed a suit for recovery of possession of about 0.4 R portion of the suit land Gat No.494 of village Kasrali towards north east corner, from the respondents/defendants by removing encroachment.
3. Before filing the suit, the petitioner applied to the Land Record Authorities to measure the suit land and adjoining lands. Pursuant to the application filed by the petitioner, the T.I.L.R. has measured the land of the petitioner and conducted a panchnama on 17-03-2017 and has drawn a map, which is placed on record in the

suit. The T.I.L.R was examined in the suit, he has admitted that except Gat No.494 of the petitioner, other adjoining lands were not measured by him.

4. In these facts, the petitioner filed application (Exhibit-44) for appointment of Court Commissioner, which is rejected by the trial court by the impugned order. While rejecting the said application, the trial court has come to a conclusion that, the Court Commissioner cannot be appointed to remove the deficiencies in earlier Court Commissioner's report, merely because, the adjoining land owners were not given notices at the time of measurement carried out at the instance of the petitioner, re-measurement cannot be sought. The petitioner had only applied for measurement of suit land Gat No.494 and he did not ask for measurement of the adjoining lands. Therefore, the measurement carried out by the T.I.L.R. cannot be faulted with and the petitioner has failed to bring on record that the measurement carried out by the T.I.L.R. is faulty.

5. Heard the learned Advocate for the petitioner and the learned Advocate for the respondents.

6. It is a matter of record that the suit is filed for removal of encroachment on the part of the respondents/defendants. It is a settled legal position that in the matter of removal of

encroachment, the Court Commissioner needs to be appointed, so as to enable the Court to arrive at a just decision of the matter.

7. The trial court has erred in rejecting the application filed by the petitioner on erroneous ground that the earlier Court Commissioner's report cannot be ignored. While observing so, the trial court has lost sight of the fact that the T.I.L.R. was not the Court Commissioner and the T.I.L.R. had carried out the measurement at the instance of the petitioner, that too prior to the filing of the suit. When it is a specific case of the petitioner that the respondents – defendants have encroached on 0.4 R suit land, the trial court ought to have allowed the application, so as to bring on record correct factual position of the suit land and the adjoining lands. The impugned order therefore cannot be sustained.

8. In the result, the writ petition is allowed and the impugned order is hereby quashed and set aside. The application Exhibit-44 filed by the petitioner is allowed. The Court Commissioner (TILR) shall carry out the work of Court Commissioner within a period of four weeks from the date of receipt of this order and submit a report before the trial court.

[NITIN B. SURYAWANSHI, J.]