

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

**WRIT PETITION NO.7128 OF 2022**

**DILIP SHIVAJI AASANE AND OTHERS  
VERSUS  
NILESH PRABHAKAR PAKAHRE AND ANOTHER**

...

Advocate for Petitioners : Ms. Mousumi Rout

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**CORAM : MANGESH S. PATIL, J.**

**DATE : 12.07.2022**

**PER COURT :**

Heard.

2. The petitioners are the original defendants challenging the order passed by the trial court on an application filed by the respondent plaintiff seeking appointment of a TILR for carrying out measurement of the properties.

3. The learned advocate for the petitioners vehemently submits that the petitioner No.3 who is the defendant No.3 was not duly served. The other petitioners had given the consent under some misconception on the basis of which the impugned order is passed. The order could not have been passed for appointment of court commissioner before the respondents stepped into the witness box. There is no reason to carry out any measurement at this juncture. The trial court has erred in allowing the application and appointing the Court Commissioner.

4. I have carefully considered the submissions and perused the order as also the papers.

5. At the out set, it is necessary to note that the petitioner No.3 was duly served with the summons but had not appeared and the suit proceeded *ex parte*.
6. The rest of the petitioners who are the defendant Nos.1, 2 and 4 had consented for carrying out the measurement, the only rider they had put was that it should happen at the respondents expense.
7. Considering all these facts and the nature of the dispute, in order to settle the dispute pertaining to the boundary the trial court has directed appointment of court commissioner for carrying out the measurement.
8. The petitioners in spite of having given consent for carrying out such measurement, have not explained anywhere in the petition as to what prompted them to give such consent.
9. The petitioners cannot be allowed to approbate and reprobate. They are clearly misusing the process of the Court.
10. The Writ Petition is dismissed with cost.

**(MANGESH S. PATIL, J.)**