

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

WRIT PETITION NO.9524 OF 2015

RAMAKANT BALIRAM JOSHI AND OTHERS
VERSUS
ANANT SAKHARAM JOSHI AND OTHERS

...
Advocate for Petitioners : Mr. Kadam Vishant P.
Advocate for Respondent Nos.1 to 5 : Mr. V. B. Deshmukh
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JULY, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the learned Civil Judge, Junior Division at Purna, District Parbhani below Exhibit-39 in Regular Civil Suit No.141/2012, thereby rejecting the application filed by the petitioners under Order 26 Rule 9 of the Civil Procedure Code (for short 'CPC') for appointment of Court Commissioner.

2. The petitioners/plaintiffs have filed a suit for recovery of possession of the suit lands and for perpetual injunction. Along with the suit, the petitioners have filed a map, which was disputed by the respondents-defendants. Thereafter, the evidence was adduced in the suit. After leading the evidence, the petitioners/plaintiffs filed the present application (Exhibit-39) seeking appointment of Court Commissioner. The application was resisted by the

respondents-defendants and the trial court has rejected the said application. Hence, this petition.

3. Having heard the learned Advocate for the petitioners, learned Advocate for respondents and after perusing the documents placed on record, it is clear that the measurement and map filed by the petitioners on record are disputed by the respondents-defendants. In the written statement filed by the respondents-defendants, they have averred that they have applied for measurement through TILR and the report of the TILR is awaited.

4. In the application filed by the petitioners/plaintiffs, the petitioners have sought measurement of land gat nos.667, 668, 669 and 670 i.e. the lands belonging to the petitioners, respondents as well as other adjoining land owners.

5. In view of the fact that the measurement and map filed by the petitioners is disputed by the respondents and since the respondents have themselves got the land measured, it appears that the appointment of Court Commissioner is necessary. In suit for removal of encroachment, the appointment of Court Commissioner would help the trial court to effectively resolve the dispute between the parties.

6. The trial court has erred in holding that the petitioners are seeking appointment of the Court Commissioner to remove lacuna in their evidence and the petitioners can prove their case on the

basis of map prepared by the TILR. For effective adjudication of the dispute between the parties, appointment of Court Commissioner is necessary. The impugned order therefore cannot be sustained. Hence, the following order:

ORDER

(I) The writ petition is allowed in terms of prayer clause 'B'.

(II) The impugned order passed by the learned Civil Judge, Junior Division at Purna, District Parbhani below Exhibit-39 in Regular Civil Suit No.141/2012, is quashed and set aside.

(III) Application (Exhibit-39) is allowed.

(IV) The TILR be appointed as a Court Commissioner within a period of two weeks from the date of receipt of writ of this Court.

(V) The TILR shall measure the lands mentioned in Exhibit-39 by giving notices to all the concerned and submit his report within a period of four weeks thereafter.

[NITIN B. SURYAWANSHI, J.]