

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

**WRIT PETITION NO.10878 OF 2022**

**SUBHASH MAROTI SHELKE  
VERSUS  
ARUN SOPANRAO SHELKE**

...

Mr. Krishna P. Rodge, Advocate for the Petitioner.

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**CORAM : SANDEEP V. MARNE, J.  
DATED : 29<sup>th</sup> NOVEMBER, 2022.**

**PER COURT:-**

1. The petitioner challenges the order dated 12.09.2022 by which his application for recalling the witness being Deputy Superintendent of Land Records for the purpose of re-examination alongwith scale instrument is rejected.

2. The application for recalling the witness was filed when the suit was listed for argument. The learned counsel for petitioner submits that recalling of the witness is necessary as the said witness has already certified encroachment by the owner of Gut No.133 upon the land at Gut No.132 to the extent of 41R, however the exact boundaries of such encroachment have not come on record.

3. It appears that, land was measured by Deputy Superintendent of Land Records, Ahmedpur on 16.03.2012 i.e. before filing of the suit. The petitioner had moved another application for appointment of Court Commissioner for re-measurement of land, which has already been turned down by the

Trial Court. The Writ Petition challenging that order of rejection of appointment of Court Commissioner has also been dismissed by this Court.

4. In the light of the fact that petitioner's application for appointment of Court Commissioner for re-measurement of the land for ascertaining extent of encroachment by defendant being turned down, no purpose would be served by recalling the witness for re-examination, who has not only measured the land in the year 2012, but will not be in a position to certify the exact boundaries of encroachment. Such ascertainment would have been done only by re-measurement of land. The application for re-measurement of the land has already been rejected and that rejection order has attained finality.

5. In the light of the above position emerging, no error can be said to be committed by the Trial Court in rejecting petitioner's application for recalling witness.

6. The petition is devoid of merits and the same is dismissed without any orders as to cost.

**(SANDEEP V. MARNE)**  
**JUDGE**