

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO.12288 OF 2022

SONYABAPU GOVIND SHINDE

VERSUS

DEEPA NILESH WAKCHOURE AND OTHERS

AND

928 WRIT PETITION NO.12442 OF 2022

NAUR PRAGAT BAGAYATDAR V.K.S.S. THROUGH ITS CHAIRMAN
SONYABAPU GOVIND SHINDE

VERSUS

DEEPA NILESH WAKCHOURE AND OTHERS

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Advocate for Petitioners : Mr D.R. Adhav (in both the petitions)

CORAM : SANDEEP V. MARNE, J.

DATE : 8th DECEMBER, 2022

PER COURT :

1. These petitions are filed challenging the order dated 24.06.2022 passed by the 2nd Jt. Civil Judge, Junior Division, Shrimrampur rejecting applications filed by petitioners (plaintiffs in R.C.S. No. 114/2021 and 115/2021) for appointment of Court Commissioner for measurement of land and fixation of boundaries.

2. The solitary prayer sought in the plaint by the plaintiff is for measurement of the land, fixation of boundaries and for removal of encroachment, if found upon such measurement. The trial in the suit is yet to commence and the plaintiffs are yet to adduce evidence to elucidate their case. If the prayer for grant of measurement of land by appointment

of Court Commissioner is granted at this stage, the same would virtually amount to decreeing most part of the suit. In my view, therefore, considering the fact and circumstances of the case, the application filed for appointment of Court Commissioner for measurement of the land was clearly premature. The trial Court has not committed any error in rejecting the applications.

3. One of the reasons why the trial Court has rejected the application for appointment of Court Commissioner is that boundaries of the property are not properly described in the sale deed executed in favour of the plaintiffs. The learned counsel for petitioners submits that after execution of the sale deed, correction deed has been executed correcting the boundaries of the land in favour of the plaintiff in R.C.S. No. 115/2021 and that this aspect has not been taken into consideration by the trial Court while rejecting the application. The submission appears to be correct.

4. The writ petitions are accordingly dismissed reserving liberty in favour of petitioners for filing an appropriate application for appointment of Court Commissioner after adducing their evidence and in the event of such application being filed, the trial Court shall consider and decide the same strictly on their merits without being influenced by the observations made by the Court in the order dated 24.06.2022 or in the present order.

[SANDEEP V. MARNE, J.]

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