

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

WRIT PETITION NO.3546 OF 2022

SHASHIKALA BHIMRAO KEDAR  
VERSUS  
VISHNU GANPAT KEDAR AND OTHERS

...  
Advocate for Petitioner : Mr. G.K. Naik Thigale

.....  
**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 16<sup>th</sup> MARCH, 2022**

**ORDER :**

1. It is the grievance of the Petitioner that though the court commissioner was appointed by the trial Court under order passed below Exhibit-11 giving specific directions in clause 2 and 3 of the operative part of order dated 30.04.2019, the court commissioner according the Petitioner has not carried out measurements in accordance with the said directions. The Petitioner, therefore, filed application Exhibit-23 under Order XXVI Rule 9 seeking appointment of District Inspector of Land Record to measure the land and to ascertain the encroachment. The said application is rejected by the Trial Court holding that so as to come to a conclusion that the

court commissioner's report is incorrect his evidence needs to be recorded and it is for the plaintiff to prove that the commissioner's report is incorrect which can be proved after the evidence of commissioner is recorded. Therefore, the trial Court rejected the application.

2. The commissioner is yet to be examined before the trial Court. The Petitioner has opportunity to prove before the trial Court that the report of the commissioner is incorrect and/or he has not carried out the measurements and submitted his report as per the directions issued by the trial Court in clause 2 and 3 of the order dated 30.04.2019. Rule 10 Sub Rule 3 of Order XXVI provide that, where the court is for any reason dissatisfied with the proceedings of the commissioner, it may direct such further inquiry to be made as it shall think fit. In this view of the matter, after recording evidence of the commissioner, if the Court comes to a conclusion that the report of commissioner is incorrect, the trial Court may issue appropriate directions to the commissioner.

3. In the light of aforesaid reasons, the impugned order passed by the trial Court cannot be faulted with. No case is made out by the Petitioner to interfere in the extra ordinary writ jurisdiction. The writ petition is, therefore, dismissed. No costs.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**