

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

WRIT PETITION NO.12511 OF 2022

**VISHNU RAGHU SURWASE
VERSUS
PRABHAKAR BABURAO JADHAV AND ANOTHER**

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Mr. Mukund D. Gitte, Advocate for the Petitioner.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 09th DECEMBER, 2022.**

PER COURT:-

1. The writ petition is filed challenging the order dated 28.03.2022 passed by the 7th Joint Civil Judge, Senior Division, Latur rejecting plaintiff's/petitioner's application for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908.

2. It is disturbing as to the casual manner in which the present petition is filed. On application made by petitioner/plaintiff, Court Commissioner was appointed on earlier occasion on 26.02.2019. The TILR Latur has accordingly measured the land in question and filed his report on record. He is yet to be examined as a witness. Before his examination, plaintiff casually filed application dated 27.09.2021 for appointment of Court Commissioner for re-measurement of land by making casual a statement that the Commissioner did not show the land of Shivaji Jivanrao Patil. In the present petition petitioner has not filed copy of the measurement report of the Court Commissioner and it is not possible to verify whether the

said statement made in the application dated 27.09.2021 is correct or not. The learned counsel for petitioner prays for time to file copy of such measurement report.

3. In my view, since the entire petition was hinging on the alleged incorrect measurement by the Court Commissioner, it was utmost necessary for petitioner to file report of the Court Commissioner on record.

4. Be that as it may. The TILR who has carried out the measurement is yet to be examined as a witness in the suit. Whether he has correctly carried out the measurement or not would be revealed once his evidence is recorded. In the event, the Trial Court arrives at a conclusion that there is any lacuna in the measurement conducted by the TILR, the Court possesses necessary powers to direct re-measurement. Even plaintiff can apply for re-measurement by satisfying the Court after recording of evidence of the TILR that there is any lacuna in the earlier measurement.

5. The application of petitioner/plaintiff is thus rightly rejected by the Trial Court. The petition is devoid of merits. The same is dismissed without any orders as to cost.

(SANDEEP V. MARNE)
JUDGE