

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

947 WRIT PETITION NO.11698 OF 2022

**NANABHAU RANGANATH KHOSE AND ANOTHER
VERSUS
TATYABA KISAN KHOSE AND OTHERS**

...
Advocate for Petitioners : Mr. Chandrakant K. Shinde
...

CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

PER COURT :

. By this petition, petitioners have challenged the order dated 17.11.2022 passed by the Civil Judge Senior Division, Newasa rejecting petitioners' application at Exh.115 for appointment of Court Commissioner.

2. The suit pertains to the year 2005. It was earlier dismissed on 29.06.2009. In an appeal, the District Court was pleased to remand the suit for fresh decision by grant of opportunity to both the parties to lead evidence. The District Court had also permitted measurement of the land. In pursuance of the leave granted by the District Court, Deputy Superintendent of Land Records, Newasa was appointed as Court Commissioner. He has measured land and submitted the report. Thereafter defendant nos.1

and 3 have filed application at Exh.115 seeking appointment of the Court Commissioner to establish the alleged fact of difference in the level of the lands of plaintiffs and defendant nos.1 and 3. By appointment of Court Commissioner, defendant nos.1 and 3 desire to establish existence of stems of the trees on the boundaries as well as difference in the level of the lands of the plaintiffs and defendant nos.1 and 3.

3. The trial Court has proceeded to reject the application. The Deputy Superintendent of Land Records, Newasa has already measured the lands of the plaintiffs and the defendant nos.1 to 3 and his report would indicate whether there is any encroachment or not. The defendants would have all the opportunities to cross-examine the Deputy Superintendent of Land Records. The defendants would be independently in a position to prove the alleged existence of stems of trees and difference in the levels of the lands by leading necessary oral and documentary evidence. Appointment of Court Commissioner for that purpose is clearly not warranted. The trial Court has rightly rejected the application filed by the petitioners. The petition is devoid of merits and is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)