

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

WRIT PETITION NO.960 OF 2019

**VATSALABAI SHRIDHAR BACHAKAR AND OTHERS
VERSUS
BABAN SHANKAR LONDHE AND ANOTHER**

...
Advocate for Petitioners : Mr. Ashraf Patel h/f Mr. A. P. Avhad
Advocate for Respondent Nos. 1 & 2 : Mr. S. R. Dheple h/f
Mr. P. R. Nangare
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th OCTOBER, 2022

PER COURT :

1. Petitioners are aggrieved by order dated 10/09/2018, passed by learned 2nd Joint Civil Judge Junior Division, Pathardi below Exhibit-110 in Regular Civil Suit No.83/2011.
2. Petitioners have filed suit for perpetual injunction and measurement of suit land and fixing of boundaries. During pendency of suit, petitioners filed application for appointment of Court Commissioner for measurement of suit land. Trial Court allowed the said application and TILR, Pathardi was appointed for measurement of suit land. After carrying out measurement, the Court Commissioner submitted his report and maps. His evidence was recorded in the suit. After his evidence, petitioners/plaintiffs filed application Exhibit-110 seeking re-measurement of suit land by the TILR, contending that Court Commissioner has not filed order of

his appointment, receipt of notices and that he has not prepared map 'B' as per map 'A'. The said application was resisted by respondents/defendants. Trial Court rejected the said application. Hence, this petition.

3. I have given due consideration to rival submissions of learned advocate for petitioners and learned advocate for respondents, perused the grounds raised in writ petition memo, documents filed alongwith writ petition and the impugned order. I am of the considered view that impugned order is not liable to be interfered with.

4. Admittedly, at the instance of petitioners, Court Commissioner was appointed and measurement was carried out. After the Court Commissioner is examined, application seeking re-measurement is filed by petitioners/plaintiffs. Trial Court has observed that petitioners/plaintiffs have admitted report of measurement and have sought re-measurement only on the ground of procedural irregularities committed by Court Commissioner. Trial Court appears to be right in recording said finding.

5. Nothing is mentioned in the application filed by petitioners seeking re-measurement, as to how incorrect measurement is carried out by Court Commissioner. Petitioners

have failed to make out any case for re-measurement as they could not point out as to what prejudice would be caused to them if re-measurement is not carried out. Therefore, there is nothing on record to show that there is mistake in actual measurement carried out by Court Commissioner. Trial Court, therefore, is justified in rejecting application filed by petitioners.

6. No legal or factual error is committed by trial Court in rejecting the application. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. Writ petition being devoid of merits, is dismissed.

7. Needless to mention that observations made in this order shall not influence trial Court while deciding the suit on merits.

(NITIN B. SURYAWANSHI, J.)