

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1116 OF 2022

DNYANESHWAR BHAURAO PAWAR

VERSUS

THE COLLECTOR AND OTHERS

Advocate for Petitioner : Mr. Tukaram M. Venjane

AGP for Respondent No.1-State : Mrs. V. S. Choudhari

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23-02-2022

PER COURT :-

1. The petitioner is aggrieved by the Order below Exhibit-63 dated 31.03.2021 passed by the learned Joint Civil Judge, Senior Division, Omarga, in Regular Civil Suit No. 12 of 2016, thereby rejecting the Application filed by the petitioner for directing the Court Commissioner, Taluka Inspector Land Records (T.I.L.R.) to measure each Pot-Hissa of the said land/Survey, measured by the Commissioner in terms of order passed below Exhibit-12.

2. The petitioner, by filing Exhibit-12, sought appointment of the T.I.L.R. as Court Commissioner and direction to him to measure the suit properties. The said Application (Exhibit-12) came to be allowed by the trial Court vide Order dated 27.10.2017. Pursuant to the direction, the Court Commissioner measured suit properties and submitted his report at Exhibit-46.

According to the petitioner, the Court Commissioner has measured the land but not the Pot-Hissas. Therefore, the

Application (Exhibit-63) is filed by the petitioner.

3. It is clear from the documents annexed to the petition that, the report of the Court Commissioner is on record. The application of the petitioner for calling the record (Exhibit-52) is already rejected by the trial Court. The suit is pending for cross-examination of the plaintiff's witness No.1. In case, the plaintiff makes out a case, on the basis of which, the trial Court is dissatisfied for any reason, then it may in terms of Sub-rule (3) of Rule 10 of Order XXVI of the Code of Civil Procedure, 1908 (C.P.C.), direct further inquiry to be made by the Commissioner. At this stage, the petitioner has not made out a case to warrant further inquiry as per the provision contemplated in Sub-rule (3) of Rule 10 of Order XXVI of the C.P.C.

4. In view of the afore-stated reasons, no case is made out by the petitioner to interfere in the well reasoned order passed by the trial Court, which is impugned in the present petition. There is no error or perversity in the impugned order.

5. The Writ Petition is, therefore, dismissed. However, during the course of trial, the petitioner is at liberty to seek directions as contemplated by Sub-rule (3) of Rule 10 of Order XXVI of the C.P.C. from the trial Court, which shall be considered by the said Court on its own merits.

(NITIN B. SURYAWANSHI)
JUDGE