

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

WRIT PETITION NO.2062 OF 2023

**HARUSBAI SHRIDHAR PATIL AND ANOTHER
VERSUS
AJAY RAM KADAM AND OTHERS**

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Advocate for Petitioners : Mr. Amol A. Kokad
Advocate for Respondent Nos. 1 & 2 : Ms. M.S. Mhase

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th JUNE, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 11/03/2022, passed by learned 2nd Joint Civil Judge, Junior Division, Nilanga, below Exhibit-42 in Regular Civil Suit No.90/2018, thereby appointing Court commissioner and directing him to carry out measurement of only the suit property of plaintiffs/respondent Nos. 1 and 2.

2. Respondent Nos.1 and 2/original plaintiffs filed the suit for recovery of possession of land Survey No.93/A, admeasuring 1 H 08 R. Petitioners/original defendant Nos.2 and 3 resisted the suit by filing written statement contending that, there is no common Bandh in between lands of plaintiffs, defendant No.2 and defendant No.4 and there are marks only. The length of land of plaintiff and defendant No.4 is equal. Defendants and plaintiffs are cultivating their lands by using old marks which are present towards Eastern

and Western Bandhs. The defendants further categorically averred that they have no objection for measuring land Survey No.93 through T.I.L.R. office and fixing the boundaries.

3. Plaintiffs filed application Exhibit-42 under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner for carrying out measurement of the suit property i.e. land Survey No.93/A, admeasuring 1 H 08 R, which is allowed by the Trial Court. Petitioners are aggrieved by the said order, the grievance of petitioners is that Trial Court ought to have directed measurement of entire Survey No.93 and not only the suit property.

4. Having heard learned advocate for petitioners and learned advocate for respondent Nos.1 and 2, and after going through the memo of writ petition, annexures thereto and the impugned order, this Court is of the opinion that, it is desirable that Court Commissioner should measure the Survey No.93/A belonging to plaintiffs and Survey Nos.93/B, 92 and 93/2 belonging to the defendants, so as to effectively adjudicate the dispute between the parties.

5. No prejudice is likely to be caused to either party if these survey numbers are measured and their boundaries are fixed. Trial Court ought to have considered this aspect and should have directed measurement of the above survey numbers.

6. Though the Trial Court in operative part of the impugned order, has directed the Court Commissioner that if it is required to measure adjacent land of suit property, then he is permitted to do so, however, it would have been better if the Court Commissioner was directed to measure the lands owned by plaintiffs and defendants both.

7. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Order dated 11/03/2022, passed below Exhibit-42 in Regular Civil Suit No.90/2018, is modified to the following effect:-

Deputy Superintendent Of Land Record, Nilanga, is appointed as Court commissioner. He is directed to measure land Survey No.93/A belonging to plaintiffs and Survey Nos.93/B, 92 and 93/2 belonging to the defendants and to show proper description of the said lands along with measurement, and submit detail report in that behalf within a period of two months from the date of receipt of writ of this order.
- (III) Parties are directed to bear the expense of measurement of their own lands.

(NITIN B. SURYAWANSHI, J.)