

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

WRIT PETITION NO.12766 OF 2022

**BABURAO DHULAJI WALHEKAR AND OTHERS
VERSUS**

KERU BABURAO SARODE AND OTHERS

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Advocate for Petitioners : Mr. Rahul R. Karpe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th JUNE, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 02/09/2022, passed by learned 4th Joint Civil Judge Junior Division, Newasa, below Exhibit-32 in Regular Civil Suit No.510/2016, thereby rejecting the application filed by petitioners for appointment of District Superintendent of Land Record as Court Commissioner for measurement of suit property.

2. Having heard learned advocate for petitioners and on going through the memo of writ petition, annexures thereto and the impugned order, this Court is of the considered view that no case is made out by the petitioners to interfere with the impugned order.

3. Respondents/plaintiffs have filed the suit against petitioners/defendants, for possession of the portion of suit property encroached by the defendants. Defendants resisted the

suit by filing written statement. In the written statement specific averment is made that plaintiffs have filed suit on the basis of surveyor's report dated 17/10/2015, in respect of the suit property Gut No.54, which is prepared without issuing notices to the adjoining land owners. The surveyor, at the time of said measurement, has failed to take into consideration extract of scheme of Gut Nos.54 and 55 of Survey Nos.32/3 and 32/2. As per the scheme extract, Survey No.32/3 is converted into Gut No.54, admeasuring 7 Acres 16 Gunthas. On the Eastern side of Gut No.54 there is a public road and in the road widening some portion of Gut No.54 was acquired. This fact was suppressed by the Court Commissioner. So the measurement was carried out without going through the original record and the same is done only on the basis of area mentioned in the 7/12 extract. Defendants have claimed that wrong boundaries of the suit property are mentioned in the suit by the plaintiffs.

4. In the facts of the present case, Trial Court is justified in rejecting the application by observing that map prepared by the Court Commissioner and the measurement report is yet to be produced in the Court. At the time of recording of evidence of Court Commissioner, petitioners can challenge the measurement report and map or the petitioners can call the Court Commissioner for

examination in the Court. Trial Court has rightly held application of the petitioners for appointment of Court Commissioner, as premature.

6. No prejudice is caused to the petitioners by rejection of their application which apparently is premature. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merits is dismissed.

7. Petitioners are at liberty to call the Court Commissioner as witness before the Trial Court, if he is not examined as witness by the plaintiffs.

8. In case the petitioners succeed to prove before Trial Court that measurement was not properly carried out by the Court Commissioner, they are at liberty to file application for appointment of Court Commissioner at that stage, which shall be considered by the Trial Court on its own merit, without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)