

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11477 OF 2018

Baburao Aba Shewale, deceased
through legal heirs ... Petitioner

V/s.

Chairman, Hanuman Sahakari Milk
Produce Coop. Society Ltd.,
Havelwadi (Sawade) Taluka Karad,
District Satara ... Respondent

Mr. P.D. Dalvi i/by Mr. Kalpesh U. Patil for the
petitioner.

Mr. Nikhil Wadikar with Mr. Sejal Jain i/by Mr. Nandu
V. Pawar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 21, 2023

PC.:

1. The petitioner is plaintiff in Regular Civil Suit No.110 of 2012. The suit is filed for removal of encroachment. During pendency of the suit, Taluka Inspector of Land Records ("TILR" for short) was appointed for measurement of the suit property. Accordingly, he measured the suit property.

2. During pendency of the said suit, the plaintiff applied for issuance of witness summons to the TILR. The Trial Court by the impugned order has rejected such application on the ground that it was open for the petitioner to call such TILR as his own witness

and there is no need to issue witness summons.

3. It needs to be noted that suit is for removal of encroachment. Appointment and examination of TILR is necessary for complete and effectual adjudication of the issue involved. Therefore, the technicalities of the procedure should not come in the way of Court to deliver justice. Therefore, in my opinion, the Trial Court ought to have allowed the plaintiff to examine TILR by issuing witness summons. In my opinion, it would be in the interest of justice to permit plaintiff to examine TILR by issuing witness summons. Hence, following order:

- a) The impugned order dated 17 February 2016 passed below Exhibit 60 in Regular Civil Suit No.110 of 2012 by the learned Civil Judge Senior Division, Karad is quashed and set aside;
- b) Application below Exhibit 60 in Regular Civil Suit No.110 of 2012 is allowed.

4. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)