

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.988 OF 2025

Dilip Laxman Zhagde and Anr. ...Petitioners
vs.
Suresh Rajaram Zhagde and Ors. ...Respondents
Mr. Rushikesh Barge, for the Petitioners.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 23, 2025

P.C:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to an order dated 5th August, 2024 passed by the learned Civil Judge, Wai whereby the Application preferred by the petitioners to appoint a Court Commissioner for a fresh measurement of the suit land came to be rejected.
3. Initially the petitioners had applied for appointment of the Court Commissioner, and by an order dated 17th June, 2016 the Court Commissioner was appointed. The Court Commissioner i.e. T.I.L.R., Wai executed the commission and submitted the report.
4. The petitioners filed another application with the assertion that the Court Commissioner has not carried out the measurement in accordance with the directions of the Court in the order dated 17th June, 2016. By the impugned order the learned Civil Judge was

persuaded to reject the Application opining that the Court Commissioner has not been examined and it may not be appropriate to direct re-measurement without examining the Court Commissioner.

5. The view taken by the learned Civil Judge is justifiable. The petitioners/ plaintiffs have the opportunity to examine the Court Commissioner touching the report submitted by the Court Commissioner. Thus, no interference is warranted at this stage.

6. In the event, after examination of the Court Commissioner, the petitioners apply for re-measurement of the land, the trial Court shall decide the same in accordance with law.

7. Petition disposed.

(N. J. JAMADAR, J.)