

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

CIVIL REVISION APPLICATION NO. 06 OF 2014

Gram Panchayat Aadgaon, Tq. Loha,
and another .. Petitioners

Versus

Muala Shah Hyder Shah .. Respondent

Shri Ramesh I. Wakade, Advocate for Petitioners.
Shri Momin H. Shaikh, Advocate for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 20TH AUGUST, 2015.

PER COURT :

. Mr. Wakade, the learned counsel for petitioners strenuously contends that the order appointing T.I.L.R. as Court Commissioner is erroneous. It is settled preposition of law that, Court Commissioner cannot be appointed for collecting evidence. The learned counsel relies on the judgment of learned Single Judge of this Court in a case of **Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others** reported in **2001(1) All MR 653**. The learned counsel submits that, even the description of the property has not been properly given by the plaintiff. The Tribunal while appointing T.I.L.R. as Court Commissioner has not given any reasons. The construction is on other survey number and not in respect of suit survey number.

2. The learned counsel for the respondent supports the order and states that in case of disputes about identity of property, boundary disputes, etc. the T.I.L.R. is to be appointed as Court Commissioner. The learned counsel relies on the judgment of the Apex Court in a case of **Haryana Wakf Board Vs. Shanti Sarup and others** reported in (2008) 8 SCC 671, so also the judgment of the learned Single Judge of this Court in a case of **Bhupendra Bhagwat Turkar Vs. Homraj Zituji Meshram** reported in 2014(3) All MR 635.

3. With the assistance of learned counsel I have gone through the order and the application. The Court has the powers to appoint Court Commissioner as per Sec. 75 read with Order 26 Rule 9 of the Code of Civil Procedure in order to elucidate the matter in issue. The dispute, it appears is with regard to identity of the property. In such cases, it is always expedient to get the property measured by appointing an expert. The Tribunal has appointed an expert for measuring the property so as to assist the Tribunal in arriving at just conclusion.

4. In the light of the above, the civil revision application stands rejected. No costs.

[S. V. GANGAPURWALA, J.]