

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

**WRIT PETITION NO. 6562 OF 2015**

Kalidas Govind Nanaware

..PETITIONER

VERSUS

Babruwan @ Babru Dhondiba Surwase  
@ Suryawanshi and Others

..RESPONDENTS

....

Mr. S.S. Choudhari, Advocate for petitioner.

Mr. S.J. Salgare, Advocate for Respondent Nos. 1 to 3.

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**CORAM : T.V. NALAWADE, J.**

**DATED : 14<sup>th</sup> DECEMBER, 2016**

**ORDER :**

1. The petition is filed to challenge the order made on Exhibit 15 in Regular Civil Suit No. 539 of 2013 which is pending in the Court of Civil Judge, Junior Division, Osmanabad. In that suit filed for relief of injunction and demarkation of boundary of the suit property, the aforesaid application was given for appointment of Court Commissioner who is expected to fix the boundaries of two suit lands. After hearing both sides, the Trial Court has appointed a Surveyor as Court Commissioner and he is expected to fix the boundary marks.

2. Learned Counsel for petitioner submitted that appointment of Court Commissioner in the present matter amounts to collection of evidence

and so order cannot sustain in law. He placed reliance on two cases of this Court which are reported as **2000(2) Mh.L.J. 209 ( Efigenio Dias and Another Vs. Malaquias D'costa and Others )** and **2001(2) Mh.L.J. 959 ( Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and Others )**. On the other hand learned Counsel for respondent placed reliance on observations made by the Apex Court in the case reported as **AIR 2008 SC (Supp) 616 ( Haryana Waqf Board Vs. Shanti Sarup and Others )**.

3. Suit for fixation of boundary marks can be filed. When such suit is filed, step needs to be taken for appointment of Court Commissioner for fixation of boundary marks. The surveyor will be available for cross-examination to the defendants and defendants can show that boundary marks shown are not correctly fixed. Further there can be appointment of superior officer for taking measurement which can be done under the Land Revenue Code but not in this case.

4. In view of this circumstance, it is not possible to interfere in the order passed by the Trial Court. Petition stands dismissed. Interim relief is vacated.

( T.V. NALAWADE, J. )

SSD