

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9517 OF 2017
(Tukaram Bansi Late Vs. Suresh Narayan Aaghav and others)

Dr.S.D.Tawshikar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 08/03/2017 by which the Trial Court has rejected application Exh.53 praying for appointment of a Court Commissioner for jointly measuring the properties of the plaintiff as well as the defendants.

2. Dr.Tawshikar, learned Advocate for the petitioner specifically submits that a prayer at clause 3 in the plaint has been put forth seeking appointment of a Court Commissioner, in as much as it has been averred in paragraph No.3 that the defendants are trying to break the *bandh* and thereby resort to encroachments.

3. Record reveals in the light of the statement of the petitioner that Exhibit 53 has been filed on 07/10/2016 immediately after the framing of the issues. Evidence is yet to be led by the plaintiff.

4. I am of the view that when the plaintiff has prayed for injunction in the suit, the onus and burden lies on the plaintiff to establish that some encroachment has occurred and this is possible through the recording of oral evidence. Thereafter, if the Court is

convinced, the TILR could be appointed as a Court Commissioner for jointly measuring the properties of the litigating sides, fixing of boundaries and thereby locating the exact encroachment. This Court has concluded in catena of judgments that an application for appointment of Court Commissioner before recording of oral evidence, could be permitted only in rare cases.

5. Considering the above, I do not find that the impugned order passed at the stage of framing of issues, could be termed as being perverse or erroneous. This petition being devoid of merit, is therefore, dismissed.

6. Needless to state, after recording oral evidence, if either of the litigating sides find that the appointment of a Court Commissioner would assist the Court, they would be at liberty to file an application which would be considered by the Trial court on its own merits, without being influenced by the order dated 08/03/2017.

(Ravindra V.Ghuge, J.)