

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

WRIT PETITION NO. 8602 OF 2017

DR. BHAGWANRAO VENKATRAO KENDRE
VERSUS
SHESHNARAYAN GUNDIBA WAGHMARE AND OTHERS

Advocate for Petitioner : Shri P.S. Burse.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th September, 2017

PER COURT :

1. The petitioner is aggrieved by the order dated 15/04/2017, passed by the Trial Court, by which, application Exhibit 50, filed by the petitioner/plaintiff seeking appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, has been rejected.
2. I have considered the strenuous submissions of the learned counsel for the petitioner. He has drawn my attention to the fifteen grounds formulated by him in the memo of the petition paper book.
3. Grievance is that, after the filing of the suit, the defendants have committed an encroachment and have destroyed the Bandh / Partition between the agricultural lands. The Bandh and the markings have been destroyed and that appointment of a Cadastral Surveyor as a Court

Commissioner is necessary, so as to locate the boundaries and fix the boundary marks.

4. It appears from the record that the application for temporary injunction filed by the petitioner has been rejected. It also appears from his pleadings in the plaint that the issue of encroachment, destruction of the Bandh and the boundary marks have nowhere been pleaded. If the contention of the petitioner is to be believed that such destructive acts have occurred after the institution of the suit, the petitioner would have resorted to proper steps, as is permissible in law, in order to bring the subsequent events on record. In the absence of pleadings, reasons assigned for seeking appointment of a Court Commissioner cannot be said to be on the basis of the pleadings set out in the plaint.

5. Even otherwise, this Court has consistently held that though a Court Commissioner can be appointed at any stage, normally a Court Commissioner is to be appointed after the commencement of the recording of the oral evidence.

6. Considering the above, this petition is dismissed. It is, however, made clear that after the recording of oral evidence has commenced, the litigating sides would be at liberty to seek appointment of a Court Commissioner and in the event any such application is filed, the Trial

Court shall consider the same on its own merits, without being influenced by the impugned order dated 15/04/2017.

(RAVINDRA V. GHUGE, J.)

S.P.C.